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PETITION UNDER 28 U.S.C. § 2254 FOR WRIT OF
HABEAS CORPUS BY A PERSON IN STATE CUSTODY

United States District Court	District <u>of Delaware</u>
Name (under which you were convicted): <u>LYNN HARRIS</u>	Docket or Case No.: :
Place of Confinement: <u>Delaware Correctional Center</u>	Prisoner No.: <u>297441</u>
Petitioner (include the name under which you were convicted) _____ Respondent (authorized person having custody of petitioner) _____	
<u>Lynn Harris</u>	v. <u>Thomas Carroll</u>
The Attorney General of the State of <u>Delaware</u>	

PETITION

1. (a) Name and location of court that entered the judgment of conviction you are challenging: _____

Superior Court of Newcastle County

- (b) Criminal docket or case number (if you know): 193

2. (a) Date of the judgment of conviction (if you know): 2-19-04

- (b) Date of sentencing: 4-23-04

3. Length of sentence: 11 years

4. In this case, were you convicted on more than one count or of more than one crime? Yes No

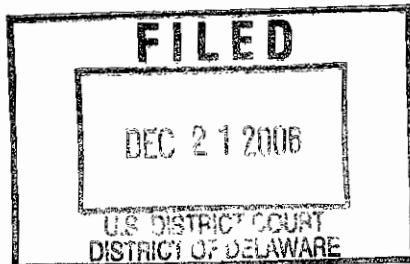
5. Identify all crimes of which you were convicted and sentenced in this case: _____

Attempted First Degree Robbery
Possession of A Firearm
Conspiracy

6. (a) What was your plea? (Check one)

- (1) Not guilty (3) Nolo contendere (no contest)
 (2) Guilty (4) Insanity plea

- (b) If you entered a guilty plea to one count or charge and a not guilty plea to another count or charge, what did you plead guilty to and what did you plead not guilty to? _____



(c) If you went to trial, what kind of trial did you have? (Check one)

Jury Judge only

7. Did you testify at a pretrial hearing, trial, or a post-trial hearing?

Yes No

8. Did you appeal from the judgment of conviction?

Yes No

9. If you did appeal, answer the following:

(a) Name of court: Supreme

(b) Docket or case number (if you know): _____

(c) Result: AFFIRM

(d) Date of result (if you know): _____

(e) Citation to the case (if you know): _____

(f) Grounds raised: State Failed to Prove all of the elements
of Attempted robbery, Officer lack of reasonable suspicion
to stop defendant, Fail to read miranda warning time
of arrest, Ineffective assistance

(g) Did you seek further review by a higher state court? Yes No

If yes, answer the following:

(1) Name of court: _____

(2) Docket or case number (if you know): _____

(3) Result: _____

(4) Date of result (if you know): _____

(5) Citation to the case (if you know): _____

(6) Grounds raised: _____

(h) Did you file a petition for certiorari in the United States Supreme Court? Yes No

If yes, answer the following:

(1) Docket or case number (if you know): _____

(2) Result: _____

(3) Date of result (if you know): _____

(4) Citation to the case (if you know): _____

10. Other than the direct appeals listed above, have you previously filed any other petitions,

applications, or motions concerning this judgment of conviction in any state court?

Yes No

11. If your answer to Question 10 was "Yes," give the following information:

(a) (1) Name of court: Superior Court(2) Docket or case number (if you know): 193(3) Date of filing (if you know): March 22 - 06(4) Nature of the proceeding: rule 61 Postconviction(5) Grounds raised: State Failed to prove all the elements of Attempted First degree Robbery, Officer lack of reasonable suspicion to stop defendant, Failed to read miranda warning time of arrest.Ineffective Assistance(6) Did you receive a hearing where evidence was given on your petition, application, or motion? Yes No (7) Result: Summary Dismissed(8) Date of result (if you know): June 13 - 06

(b) If you filed any second petition, application, or motion, give the same information:

(1) Name of court: _____

(2) Docket or case number (if you know): _____

(3) Date of filing (if you know): _____

(4) Nature of the proceeding: _____

(5) Grounds raised: _____

(6) Did you receive a hearing where evidence was given on your petition, application, or motion? Yes No

(7) Result: _____

(8) Date of result (if you know): _____

(c) If you filed any third petition, application, or motion, give the same information: _____

(1) Name of court: _____

(2) Docket or case number (if you know): _____

(3) Date of filing (if you know): _____

(4) Nature of the proceeding: _____

(5) Grounds raised: _____

(6) Did you receive a hearing where evidence was given on your petition, application, or motion? Yes No

(7) Result: _____

(8) Date of result (if you know): _____

(d) Did you appeal to the highest state court having jurisdiction over the action taken on your petition, application, or motion?

(1) First petition: Yes No

(2) Second petition: Yes No

(3) Third petition: Yes No

(e) If you did not appeal to the highest state court having jurisdiction, explain why you did not:

12. For this petition, state every ground on which you claim that you are being held in violation of the Constitution, laws, or treaties of the United States. Attach additional pages if you have more than four grounds. State the facts supporting each ground.

CAUTION: To proceed in the federal court, you must ordinarily first exhaust (use up) your available state-court remedies on each ground on which you request action by the federal court. Also, if you fail to set forth all the grounds in this petition, you may be barred from presenting additional grounds at a later date.

GROUND ONE: Officers lack For Investigatory Stop

- (a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.):

whether The police had reasonable and articulable suspicion For investigatory stop of the defendant violated his USCA, Amend 4, And Del C, Annotated Constitution, article 1 thru 6 of title II, Del C 1902

- (b) If you did not exhaust your state remedies on Ground One, explain why:
-
-
-

- (c) Direct Appeal of Ground One:

- (1) If you appealed from the judgment of conviction, did you raise this issue?

Yes No

- (2) If you did not raise this issue in your direct appeal, explain why:
-

- (d) Post-Conviction Proceedings:

- (1) Did you raise this issue through a post-conviction motion or petition for habeas corpus in a state trial court? Yes No

- (2) If your answer to Question (d)(1) is "Yes," state:

Type of motion or petition: postconviction b1 motion

Name and location of the court where the motion or petition was filed:

Superior Court Newcastle County

Docket or case number (if you know): 193

Date of the court's decision: June-13-06

Result (attach a copy of the court's opinion or order, if available): _____

(3) Did you receive a bearing on your motion or petition?

Yes No

(4) Did you appeal from the denial of your motion or petition?

Yes No

(5) If your answer to Question (d)(4) is "Yes," did you raise this issue in the appeal?

Yes No

(6) If your answer to Question (d)(4) is "Yes," state:

Name and location of the court where the appeal was filed:

Supreme Court Newcastle County

Docket or case number (if you know): 321

Date of the next decision: 5 September

Date of the Court's decision: September 20, 2013

Result (attach a copy of the court's opinion or order, if available): _____

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(7) If your answer to Question (d)(4) or Question (d)(5) is "No," explain why you did not raise this

issue: _____

[View Details](#) | [Edit](#) | [Delete](#)

(e) Other Remedies: Describe any other procedures (such as habeas corpus, administrative

remedies, etc.) that you have used to exhaust your state remedies on Ground One:

GROUND TWO: Officer Failed to read miranda rights time of arrest

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.):

whether the defendant 5th Amendment rights were violated by police when Failed to Administer defendant miranda warning at time he was arrested and taken into custody .

(b) If you did not exhaust your state remedies on Ground Two, explain why:

(c) Direct Appeal of Ground Two:

(1) If you appealed from the judgment of conviction, did you raise this issue?

Yes No

(2) If you did not raise this issue in your direct appeal, explain why:

(d) Post-Conviction Proceedings:

(1) Did you raise this issue through a post-conviction motion or petition for habeas corpus in a state trial court?

Yes No

(2) If your answer to Question (d)(1) is "Yes," state:

Type of motion or petition: Postconviction 61 motion

Name and location of the court where the motion or petition was filed:

Superior Court New Castle County

Docket or case number (if you know): 193

Date of the court's decision: June-13-06

Result (attach a copy of the court's opinion or order, if available):

(3) Did you receive a hearing on your motion or petition?

Yes No

(4) Did you appeal from the denial of your motion or petition?

Yes No

(5) If your answer to Question (d)(4) is "Yes," did you raise this issue in the appeal?

Yes No

(6) If your answer to Question (d)(4) is "Yes," state:

Name and location of the court where the appeal was filed:

Supreme Court New Castle County

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Docket or case number (if you know): 321

Date of the court's decision: September-22-06

Result (attach a copy of the court's opinion or order, if available):

(7) If your answer to Question (d)(4) or Question (d)(5) is "No," explain why you did not raise this issue:

(e) Other Remedies: Describe any other procedures (such as habeas corpus, administrative remedies, etc.) that you have used to exhaust your state remedies on Ground Two:

GROUND THREE: Ineffective Assistance of Counsel

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.):

whether counsel was ineffective when he Failed to file timely notice of appeal which is his continued obligation pursuant to the supreme court rule 26A in violation of his 6th Amendment plus 14th Amendment due process right

(b) If you did not exhaust your state remedies on Ground Three, explain why:

(c) Direct Appeal of Ground Three:

(1) If you appealed from the judgment of conviction, did you raise this issue?

Yes No

(2) If you did not raise this issue in your direct appeal, explain why:

(d) Post-Conviction Proceedings:

(1) Did you raise this issue through a post-conviction motion or petition for habeas corpus in a state trial court? Yes No

(2) If your answer to Question (d)(1) is "Yes," state:

Type of motion or petition: Postconviction 61 motion

Name and location of the court where the motion or petition was filed: _____

Superior Court New Castle County

Docket or case number (if you know): 193

Date of the court's decision: June - 13-06

Result (attach a copy of the court's opinion or order, if available):

(3) Did you receive a hearing on your motion or petition?

Yes No

(4) Did you appeal from the denial of your motion or petition?

Yes No

(5) If your answer to Question (d)(4) is "Yes," did you raise this issue in the appeal?

Yes No

(6) If your answer to Question (d)(4) is "Yes," state:

Name and location of the court where the appeal was filed: _____

Supreme Court New Castle County

Docket or case number (if you know): 321

Date of the court's decision: September - 22-06

Result (attach a copy of the court's opinion or order, if available):

(7) If your answer to Question (d)(4) or Question (d)(5) is "No," explain why you did not raise this issue:

(e) Other Remedies: Describe any other procedures (such as habeas corpus, administrative remedies, etc.) that you have used to exhaust your state remedies on Ground Three:

GROUND FOUR: State Failed to prove elements
of Attempted First degree Robbery

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.):
whether the state Failed to prove their case beyond
a reasonable doubt under the corpus delicti Rule
to support the conviction of Attempted Robbery First degree
with a deadly weapon charge, in their case deprived
the appellant to a Fair trial under the 5th Amendment
plus denial of his due process rights under the
14th Amendment

(b) If you did not exhaust your state remedies on Ground Four, explain why:

(c) Direct Appeal of Ground Four:

(1) If you appealed from the judgment of conviction, did you raise this issue?

Yes No

(2) If you did not raise this issue in your direct appeal, explain why:

(d) Post-Conviction Proceedings:

(1) Did you raise this issue through a post-conviction motion or petition for habeas corpus in a state trial court? Yes No

(2) If your answer to Question (d)(1) is "Yes," state:

Type of motion or petition: Postconviction G1 motion

Name and location of the court where the motion or petition was filed:

SUPERIOR COURT NEW CASTLE COUNTY

Docket or case number (if you know): 193

Date of the court's decision: JUNE - 13 - 06

Result (attach a copy of the court's opinion or order, if available):

(3) Did you receive a hearing on your motion or petition?

Yes No

(4) Did you appeal from the denial of your motion or petition?

Yes No

(5) If your answer to Question (d)(4) is "Yes," did you raise this issue in the appeal?

Yes No

(6) If your answer to Question (d)(4) is "Yes," state:

Name and location of the court where the appeal was filed: _____

Supreme Court New Castle County

Docket or case number (if you know): 321

Date of the court's decision: September, 22, 06

Result (attach a copy of the court's opinion or order, if available): _____

(7) If your answer to Question (d)(4) or Question (d)(5) is "No," explain why you did not raise this issue: _____

(e) Other Remedies: Describe any other procedures (such as habeas corpus, administrative remedies, etc.) that you have used to exhaust your state remedies on Ground Four: _____

13. Please answer these additional questions about the petition you are filing:

(a) Have all grounds for relief that you have raised in this petition been presented to the highest state court having jurisdiction? Yes No

If your answer is "No," state which grounds have not been so presented and give your reason(s) for not presenting them: _____

(b) Is there any ground in this petition that has not been presented in some state or federal court? If so, which ground or grounds have not been presented, and state your reasons for not presenting them: _____

14. Have you previously filed any type of petition, application, or motion in a federal court regarding the conviction that you challenge in this petition? Yes No

If "Yes," state the name and location of the court, the docket or case number, the type of proceeding, the issues raised, the date of the court's decision, and the result for each petition, application, or motion filed. Attach a copy of any court opinion or order, if available.

15. Do you have any petition or appeal now pending (filed and not decided yet) in any court, either state or federal, for the judgment you are challenging? Yes No

If "Yes," state the name and location of the court, the docket or case number, the type of proceeding, and the issues raised.

16. Give the name and address, if you know, of each attorney who represented you in the following stages of the judgment you are challenging:

(a) At preliminary hearing: _____

(b) At arraignment and plea: _____

(c) At trial: William Deely

(d) At sentencing: William Deely

(e) On appeal: _____

(f) In any post-conviction proceeding: _____

(g) On appeal from any ruling against you in a post-conviction proceeding: _____

17. Do you have any future sentence to serve after you complete the sentence for the judgment that you are challenging? Yes No

(a) If so, give name and location of court that imposed the other sentence you will serve in the future: _____

(b) Give the date the other sentence was imposed: _____

(c) Give the length of the other sentence: _____

(d) Have you filed, or do you plan to file, any petition that challenges the judgment or sentence to be served in the future? Yes No

18. TIMELINESS OF PETITION: If your judgment of conviction became final over one year ago, you must explain why the one-year statute of limitations as contained in 28 U.S.C. § 2244(d) does not bar your petition.* _____

* The Antiterrorism and Effective Death Penalty Act of 1996 ("AEDPA") as contained in 28 U.S.C. § 2244(d) provides in part that:

(1) A one-year period of limitation shall apply to an application for a writ of habeas corpus by a person in custody pursuant to the judgment of a State court. The limitation period shall run from the latest of —

(continued...)

Therefore, petitioner asks that the Court grant the following relief: Order For
release Petitioner From unlawful
imprisonment

or any other relief to which petitioner may be entitled.

Signature of Attorney (if any)

I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct
and that this Petition for Writ of Habeas Corpus was placed in the prison mailing system on
_____ (month, date, year).

Executed (signed) on 12-18-06 (date).

Lynn O'Harris

Signature of Petitioner

*(...continued)

- (A) the date on which the judgment became final by the conclusion of direct review or the expiration of the time for seeking such review;
 - (B) the date on which the impediment to filing an application created by State action in violation of the Constitution or laws of the United States is removed, if the applicant was prevented from filing by such state action;
 - (C) the date on which the constitutional right asserted was initially recognized by the Supreme Court, if the right has been newly recognized by the Supreme Court and made retroactively applicable to cases on collateral review; or
 - (D) the date on which the factual predicate of the claim or claims presented could have been discovered through the exercise of due diligence.
- (2) The time during which a properly filed application for State post-conviction or other collateral review with respect to the pertinent judgment or claim is pending shall not be counted toward any period of limitation under this subsection.

Certificate of Service

I, Lynn Harris JR, hereby certify that I have served a true and correct cop(ies) of the attached: _____ upon the following parties/person (s): _____

1
copy

Superior Court
TO: Prothonotary OFFICE
500 N. King Street
wilmington, Del 19801

TO: _____

2
copies

TO: Clerk, united states
District Court of Delaware
844 North King Street
wilmington, De. 19801

TO: _____

BY PLACING SAME IN A SEALED ENVELOPE and depositing same in the United States Mail at the Delaware Correctional Center, 1181 Paddock Road, Smyrna, DE 19977.

On this _____ day of 12/18/06, 2005

Lynn Harris JR

If the person signing is not petitioner, state relationship to petitioner and explain why petitioner is not signing this petition. _____

IN FORMA PAUPERIS DECLARATION

[Insert appropriate court]

* * * *

1305005293

#43

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE
 IN AND FOR NEW CASTLE COUNTY
 STATE OF DELAWARE

Page 1

v.

LYNN HARRIS JR.
 Name of Movant on Indictment

IN03-05-0806-R1
 IN03-05-0808-R1
 IN03-05-0816-R1

Correct Full Name of Movant
))))))))
 No.

(to be supplied by Prothonotary)

MOTION FOR POSTCONVICTION RELIEF**MOTION FOR POSTCONVICTION RELIEF****INSTRUCTIONS**

- (1) This motion must be legibly handwritten or typewritten, and signed by the movant under penalty of perjury.
- (2) All grounds for relief and supporting facts must be included, and all questions must be answered briefly in the proper space on the form.
- (3) Additional pages are not permitted. If more room is needed, use the reverse side of the sheet.
- (4) No citation of authorities is required. If legal arguments are submitted, this should be done in a separate memorandum.
- (5) Only convictions that were included in the same plea agreement or were tried together may be challenged in a single motion.
- (6) When the motion is completed, the original must be mailed to the Prothonotary in the county in which the judgment of conviction was entered. No fee is required.
- (7) The motion will be accepted if it conforms to these instructions. Otherwise, it will be returned with a notation as to the deficiency.

To return by mail:

New Castle County Prothonotary Kent County Prothonotary
 500 N. King Street 38 The Green
 Suite 500, Lower Level 1 Dover, DE 19901
 Wilmington, DE 19801
 Sussex County Prothonotary
 P.O. Box 756
 Georgetown, DE 19947

06-786



B1

MOTION**Page 2**1. County in which you were convicted NEWCASTLE2. Judge who imposed sentence RICHARD R.COOCH3. Date sentence was imposed APRIL 13,
2004

4. Offense(s) for which you were sentenced and length of sentence (s):

ATTEMPTED ROBBERY PLUS PFDCF, TEN
YEARS.

5. Do you have any sentence(s) to serve other than the sentence(s) imposed because of the

judgment(s) under attack in this motion? Yes No

If your answer is "yes," give the following information:

Name and location of court(s) which imposed the other sentence(s):

Date sentence(s) imposed:

NONE

Length of sentence(s)

NONE

6. What was the basis for the judgment(s) of conviction? (Check one)

Plea of guilty Plea of guilty without admission of guilt ("Robinson plea") Plea of nolo contendere Verdict of jury Finding of judge (non-jury trial) 7. Judge who accepted plea or presided at trial -RICHARD R.COOCH

8. Did you take the witness stand and testify? (Check one)

No trial Yes No 9. Did you appeal from the judgment of conviction? Yes No

If your answer is "yes," give the following information:

Case number of appeal NO. 193Date of court's final order or opinion APRIL 18,2005

BZ

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10. Other than a direct appeal from the judgment(s) of conviction, have you filed any other motion(s) or petition(s) seeking relief from the judgment(s) in state or federal court?

Yes () No (X) How many? ()

If your answer is "yes," give the following information as to each:

Nature of proceeding(s)

NONE

Grounds raised

NONE

Was there an evidentiary hearing? **NONE**

Case number of proceeding(s)

NONE

Date(s) of court's final order(s) or opinion(s)

NONE

Did you appeal the result(s)? **NONE**

11. Give the name of each attorney who represented you at the following stages of the

proceedings relating to the judgment(s) under attack in this motion:

At plea of guilty or trial **WILLIAM**

DEELY

On appeal **WILLIAM**

DEELY

In any post conviction proceeding _____

12. State every ground on which you claim that your rights were violated. If you fail to set forth

all grounds in this motion, you may be barred from raising additional grounds at a later date. You

must state facts in support of the ground(s) which you claim. For your information, the following

is a list of frequently raised grounds for relief (you may also raise grounds that are not listed here):

double jeopardy; illegal detention, arrest, or search and seizure; coerced confession or guilty plea;

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uninformed waiver of the right to counsel, to remain silent, or to speedy trial;
denial of the right
to confront witnesses, to subpoena witnesses, to testify, or to effective
assistance of counsel;
suppression of favorable evidence; unfulfilled plea agreement.

B4

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Ground one: State fail to produce substantive evidence and /or prove their case beyond a reasonable doubt and meet the prerequisite's to support the conviction under the corpus delicti rule and the said statutes of title 11301 and 222(5).

Supporting facts (state the facts briefly without citing cases):

Whether the state failed to provide their case beyond a reasonable doubt under the corpus delicti rule to support the conviction for attempted robbery with a deadly weapon charge. In their case in chief deprived the defendant to a fair trial under " the 5th Amendment plus denial of his due process rights under the 14th Amendment.

Ground two: Officers lack for investigatory stop.

Supporting facts (state the facts briefly w thout citing cases):

Whether the police had reasonable and articulable suspicion for investigatory stop of the defendant, violated his usca Amend 4 and Del,C Annotated Constitution Article 1-6 of title 11 Del c, 1902.

Ground three: Officer failed to read Miranda Right time of arrest.

Supporting facts (state the facts briefly without citing cases):

Whether the defendant 5th Amendment Right were violated by police when failed to administer defendant Miranda warning at time he was arrested and taken into custody.

If any of the grounds listed were not previously raised, state briefly what grounds were not raised,

and give your reason(s) for not doing so:

Ground four: Ineffective assistance of counsel

Supporting facts / state facts briefly without citing case. Whether counsel was ineffective when he failed to file a timely notice of appeal, which is his continued obligation pursuant to the Supreme Court rule 26A in violation of his 6th Amendment plus 14th Amendment due process rights.

If any of the grounds listed were not previously raised, state briefly what grounds were not raised, and give your reason(s) for not doing so: N/A

Wherefore, movant asks that the court grant him all relief to which he may be entitled in this proceeding.

PRO-SE
Signature of attorney (if any)

I declare the truth of the above under penalty of perjury.

Date Signed

Signature of Movant
(Notarization not required)

forms/mtnpcr.wpRevised 9/2002

Ground one: _____

Supporting facts (state the facts briefly without citing cases):

Ground two: _____

Supporting facts (state the facts briefly without citing cases):

Ground three: _____

Supporting facts (state the facts briefly without citing cases):

If any of the grounds listed were not previously raised, state briefly what grounds were not raised, and give your reason(s) for not doing so: _____

Wherefore, movant asks that the court grant him all relief to which he may be entitled in this proceeding.

Signature of attorney (if any)

I declare the truth of the above under penalty of perjury.

3/9/06
Date Signed

Lynn Marie JR
Signature of Movant
(Notarization not required)

#46

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE

IN AND FOR NEW CASTLE COUNTY

STATE OF DELAWARE)
)
 I.D. #0305005239
v.)
)
RYANT N. HARRIS A/K/A)
LYNN HARRIS,)
)
Defendant)
)

Submitted: March 22, 2006

Decided: June 13, 2006

Upon Defendant's Motion for Postconviction Relief.
SUMMARILY DISMISSED.

ORDER

Stephen M. Walther, Esquire, Deputy Attorney General, Department of Justice, Wilmington, Delaware, Attorney for the State.

Ryant N. Harris a/k/a Lynn Harris, Smyrna, Delaware, *pro se*.

COOCH, J.

This 13th day of June, 2006, upon consideration of Defendant's motion for postconviction relief, it appears to the Court that:

1. Ryant N. Harris a/k/a Lynn Harris ("Defendant")¹ was found guilty and convicted, after a bench trial on February 19, 2004, of Attempted

¹ It is not clear from the record or the caption precisely what Defendant's name is.

Robbery First Degree, Possession of a Firearm During the Commission of a Felony, and Conspiracy Second Degree. On April 23, 2004, Defendant was sentenced to a total of 10 years at Level V, followed by 3 years at decreasing levels of supervision. Defendant appealed his conviction on four grounds: (1) that the State failed to prove its case beyond a reasonable doubt, (2) that the police lacked reasonable suspicion for the initial stop, (3) that his Miranda rights were violated when the police, with weapons drawn, asked Defendant if he had any weapons on him, and (4) that trial counsel provided ineffective assistance.² On April 11, 2005, the Delaware Supreme Court affirmed the convictions.³

2. Defendant filed this timely motion for postconviction relief pursuant to Superior Court Criminal Rule 61 on March 22, 2006. Defendant alleges similar, if not the exact same, grounds for postconviction relief as the grounds brought upon direct appeal. These grounds are set forth here *in toto*:

1. State fail [sic] to produce substantive evidence and/or prove their case beyond a reasonable doubt and meet the prerequisite's [sic] to support the conviction under the corpus delicti rule and the said statutes [sic] of title 11301 and 222(5).

Supporting facts: Whether the state failed to provide [sic] their case beyond a reasonable doubt under the corpus delicti rule to support the conviction for attempted robbery with a deadly weapon charge. In their case in chief deprived the defendant to a fair trial under the 5th

² *Harris v. State*, 2005 WL 850421 (Del. Supr.).

³ *Id.* (affirming trial court's decisions regarding the first three issues brought by defendant on appeal and declining to consider defendant's ineffective assistance of counsel claim).

Amendment plus denial of his due process rights under the 14th Amendment.

2. Officers lack for investigatory stop.

Supporting facts: Whether the police had reasonable and articulable suspicion for investigatory stop of the defendant, violated his usca Amend 4 [sic] and Del,C Annotated Article 1 [sic] – 6 of title 11 Del c, 1902 [sic].

3. Officer failed to read Miranda Right time of arrest [sic].

Supporting facts: Whether the defendant 5th Amendment Right were violated by police when failed to administer defendant Miranda warning [sic] at time he was arrested and taken into custody.

4. Ineffective assistance of counsel.

Supporting facts: Whether counsel was ineffective when he failed to file a timely notice of appeal, which is his continued obligation pursuant to the Supreme Court rule 26A [sic] in violation of his 6th Amendment plus 14th Amendment due process rights.

Upon review of Defendant's motion, all of the above grounds are conclusory and, thus, the motion is **SUMMARILY DISMISSED**.

3. Superior Court Criminal Rule 6 .(d)(4) provides that “[i]f it plainly appears from the motion for postconviction relief and the record of prior proceedings in this case that the movant is not entitled to relief, the judge may enter an order for its summary dismissal and cause the movant to be notified.” Defendant's motion for postconviction relief will be summarily dismissed where no facts supporting Defendant's contentions are offered and the claims are conclusory.⁴

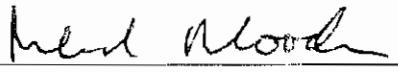
⁴ *State v. Cooper*, 2001 WL 1729147 (Del. Super.) (summarily dismissing defendant's claims of false testimony and ineffective assistance of counsel as defendant did not offer supporting facts and the claims were conclusory). See also *Jordan v. State*, 1994 WL 466142 (Del. Supr.); *State v. Brittingham*, 1994 WL 750341, * 2 (Del. Super.) (citing *Younger v. State*, 580 A.2d at 556 (holding that conclusory allegations are legally insufficient to prove ineffective assistance of counsel)).

4. Regardless of the fact that the grounds brought by Defendant in this instant motion are almost mirror images of the issues brought on direct appeal, Defendant's contentions here are completely conclusory as they are not supported by any facts in the record nor by any case law brought to the Court's attention by Defendant. They are merely reiterations of the issues already decided by the Delaware Supreme Court. Thus, Defendant's first three claims are **SUMMARILY DISMISSED**.

5. The one issue not decided by the Supreme Court, Defendant's ineffective assistance of counsel claim, is also conclusory because it points to no facts or case law in support. Thus, Defendant fourth ground for postconviction relief is conclusory and is **SUMMARILY DISMISSED**.

6. For the reasons stated, Defendant's Motion for Postconviction Relief is **SUMMARILY DISMISSED**.

IT IS SO ORDERED.

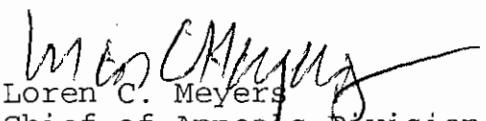

Richard R. Cooch, Jr.

oc: Prothonotary
cc: Investigative Services
William T. Deely, Esquire

CERTIFICATE OF SERVICE

The undersigned, being a member of the Bar of the Supreme Court of Delaware, hereby certifies that on August 15, 2006, he caused two copies of the attached document to be placed in the U.S. Mail, first class postage prepaid, addressed to the following:

Lynn Harris
No. 297441
Delaware Correctional Center
1181 Paddock Rd.
Smyrna, DE 19977


Loren C. Meyers
Chief of Appeals Division
Dept. of Justice

HCU

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE

IN AND FOR NEW CASTLE COUNTY

STATE OF DELAWARE)	
)	I.D. #0305005239
v.)	
)	
RYANT N. HARRIS A/K/A)	
LYNN HARRIS,)	
)	
Defendant)	
)	

Submitted: March 22, 2006

Decided: June 13, 2006

Upon Defendant's Motion for Postconviction Relief.
SUMMARILY DISMISSED.

ORDER

Stephen M. Walther, Esquire, Deputy Attorney General, Department of Justice, Wilmington, Delaware, Attorney for the State.

Ryant N. Harris a/k/a Lynn Harris, Smyrna, Delaware, *pro se*.

COOCH, J.

This 13th day of June, 2006, upon consideration of Defendant's motion for postconviction relief, it appears to the Court that:

1. Ryant N. Harris a/k/a Lynn Harris ("Defendant")¹ was found guilty and convicted, after a bench trial on February 19, 2004, of Attempted

¹ It is not clear from the record or the caption precisely what Defendant's name is.

Robbery First Degree, Possession of a Firearm During the Commission of a Felony, and Conspiracy Second Degree. On April 23, 2004, Defendant was sentenced to a total of 10 years at Level V, followed by 3 years at decreasing levels of supervision. Defendant appealed his conviction on four grounds: (1) that the State failed to prove its case beyond a reasonable doubt, (2) that the police lacked reasonable suspicion for the initial stop, (3) that his Miranda rights were violated when the police, with weapons drawn, asked Defendant if he had any weapons on him, and (4) that trial counsel provided ineffective assistance.² On April 11, 2005, the Delaware Supreme Court affirmed the convictions.³

2. Defendant filed this timely motion for postconviction relief pursuant to Superior Court Criminal Rule 61 on March 22, 2006. Defendant alleges similar, if not the exact same, grounds for postconviction relief as the grounds brought upon direct appeal. These grounds are set forth here *in toto*:

1. State fail [sic] to produce substantive evidence and/or prove their case beyond a reasonable doubt and meet the prerequisite's [sic] to support the conviction under the corpus delicti rule and the said statutes [sic] of title 11301 and 222(5).

Supporting facts: Whether the state failed to provide [sic] their case beyond a reasonable doubt under the corpus delicti rule to support the conviction for attempted robbery with a deadly weapon charge. In their case in chief deprived the defendant to a fair trial under the 5th

² *Harris v. State*, 2005 WL 850421 (Del. Supr.).

³ *Id.* (affirming trial court's decisions regarding the first three issues brought by defendant on appeal and declining to consider defendant's ineffective assistance of counsel claim).

CERTIFICATE OF SERVICE

The undersigned, being a member of the Bar of the Supreme Court of Delaware, hereby certifies that on August 15, 2006, he caused two copies of the attached document to be placed in the U.S. Mail, first class postage prepaid, addressed to the following:

Lynn Harris
No. 297441
Delaware Correctional Center
1181 Paddock Rd.
Smyrna, DE 19977


Loren C. Meyers
Chief of Appeals Division
Dept. of Justice

1305005293

#43

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE
 IN AND FOR NEW CASTLE COUNTY
 STATE OF DELAWARE

Page 1

v.

LYNN HARRIS JR.
 Name of Movant on Indictment

IN03-05-0806-R1
IN03-05-0808-R1
IN03-05-0811-R1

Correct Full Name of Movant
))))))))
 No.

(to be supplied by Prothonotary)

MOTION FOR POSTCONVICTION RELIEF**MOTION FOR POSTCONVICTION RELIEF****INSTRUCTIONS**

- (1) This motion must be legibly handwritten or typewritten, and signed by the movant under penalty of perjury.
- (2) All grounds for relief and supporting facts must be included, and all questions must be answered briefly in the proper space on the form.
- (3) Additional pages are not permitted. If more room is needed, use the reverse side of the sheet.
- (4) No citation of authorities is required. If legal arguments are submitted, this should be done in a separate memorandum.
- (5) Only convictions that were included in the same plea agreement or were tried together may be challenged in a single motion.
- (6) When the motion is completed, the original must be mailed to the Prothonotary in the county in which the judgment of conviction was entered. No fee is required.
- (7) The motion will be accepted if it conforms to these instructions. Otherwise, it will be returned with a notation as to the deficiency.

To return by mail:

New Castle County Prothonotary Kent County Prothonotary
 500 N. King Street 38 The Green
 Suite 500, Lower Level 1 Dover, DE 19901
 Wilmington, DE 19801
 Sussex County Prothonotary
 P.O. Box 756
 Georgetown, DE 19947

MOTIONPage 21. County in which you were convicted NEWCASTLE2. Judge who imposed sentence RICHARD R.
COOCH3. Date sentence was imposed APRIL 23,
20044. Offense(s) for which you were sentenced and length of sentence (s):
ATTEMPTED ROBBERY PLUS PFDCF, TEN
YEARS.5. Do you have any sentence(s) to serve other than the sentence(s) imposed
because of thejudgment(s) under attack in this motion? Yes No

If your answer is "yes," give the following information:

Name and location of court(s) which imposed the other sentence(s):

Date sentence(s) imposed:

NONE

Length of sentence(s)

NONE

6. What was the basis for the judgment(s) of conviction? (Check one)

Plea of guilty Plea of guilty without admission of guilt ("Robinson plea") Plea of nolo contendere Verdict of jury Finding of judge (non-jury trial) 7. Judge who accepted plea or presided at trial -RICHARD R.COOCH

8. Did you take the witness stand and testify? (Check one)

No trial Yes No 9. Did you appeal from the judgment of conviction? Yes No

If your answer is "yes," give the following information:

Case number of appeal NO. 193Date of court's final order or opinion APRIL 18,
2005

IN THE SUPREME COURT OF THE STATE OF DELAWARE

LYNN HARRIS,	§	
	§	No. 321, 2006
Defendant Below-	§	
Appellant,	§	
v.	28	§ Court Below—Superior Court
		§ of the State of Delaware
		§ in and for New Castle County
STATE OF DELAWARE,	§	§ Cr. ID No. 0305005293
Plaintiff Below-	JTKY	§
Appellee.	§	§

Submitted: August 15, 2006
Decided: September 22, 2006

Before **STEELE**, Chief Justice, **HOLLAND** and **RIDGELY**, Justices

ORDER

This 22nd day of September 2006, upon consideration of the appellant's opening brief and the appellee's motion to affirm pursuant to Supreme Court Rule 25(a), it appears to the Court that:

- (1) The defendant-appellant, Lynn Harris, filed an appeal from the Superior Court's June 13, 2006 order summarily dismissing his motion for postconviction relief pursuant to Superior Court Criminal Rule 61. The plaintiff-appellee, the State of Delaware, has moved to affirm the judgment of the Superior Court on the ground that it is manifest on the face of the opening brief that the appeal is without merit. We agree and AFFIRM.

the State failed to prove its case, that the police lacked reasonable suspicion to stop him and that the police failed to give him the proper Miranda warnings.

(6) In order to prevail on his claims of ineffective assistance of counsel, Harris must demonstrate that his counsel's representation fell below an objective standard of reasonableness and that, but for his counsel's unprofessional errors, there is a reasonable probability that the outcome of the proceedings would have been different.³ Although not insurmountable, the Strickland standard is highly demanding and leads to a "strong presumption that the representation was professionally reasonable."⁴

(7) As to Harris' first claim of ineffective assistance, the record reflects that, after Harris himself filed a notice of appeal in this Court, the Clerk instructed Harris' attorney to file a formal notice of appeal by a date certain. Because Harris' attorney did as the Clerk instructed, Harris' first contention is without merit. As to Harris' two remaining claims of ineffective assistance, the record reflects that a no-merit brief was filed on Harris' behalf under Supreme Court Rule 26(c), including the points that Harris wished this Court to consider. Ultimately, however, this Court determined that Harris' direct appeal was without merit. Harris has, thus,

³ *Strickland v. Washington*, 466 U.S. 668, 688, 694 (1984).

⁴ *Flamer v. State*, 585 A.2d 736, 753 (Del. 1990).

#46

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE
IN AND FOR NEW CASTLE COUNTY

STATE OF DELAWARE)	
)	I.D. #0305005239
v.)	
)	
RYANT N. HARRIS A/K/A)	
LYNN HARRIS,)	
)	
Defendant)	
)	

Submitted: March 22, 2006
Decided: June 13, 2006

Upon Defendant's Motion for Postconviction Relief.
SUMMARILY DISMISSED.

ORDER

Stephen M. Walther, Esquire, Deputy Attorney General, Department of Justice, Wilmington, Delaware, Attorney for the State.

Ryant N. Harris a/k/a Lynn Harris, Smyrna, Delaware, *pro se*.

COOCH, J.

This 13th day of June, 2006, upon consideration of Defendant's motion for postconviction relief, it appears to the Court that:

1. Ryant N. Harris a/k/a Lynn Harris ("Defendant")¹ was found guilty and convicted, after a bench trial on February 19, 2004, of Attempted

¹ It is not clear from the record or the caption precisely what Defendant's name is.

Robbery First Degree, Possession of a Firearm During the Commission of a Felony, and Conspiracy Second Degree. On April 23, 2004, Defendant was sentenced to a total of 10 years at Level V, followed by 3 years at decreasing levels of supervision. Defendant appealed his conviction on four grounds: (1) that the State failed to prove its case beyond a reasonable doubt, (2) that the police lacked reasonable suspicion for the initial stop, (3) that his Miranda rights were violated when the police, with weapons drawn, asked Defendant if he had any weapons on him, and (4) that trial counsel provided ineffective assistance.² On April 11, 2005, the Delaware Supreme Court affirmed the convictions.³

2. Defendant filed this timely motion for postconviction relief pursuant to Superior Court Criminal Rule 61 on March 22, 2006. Defendant alleges similar, if not the exact same, grounds for postconviction relief as the grounds brought upon direct appeal. These grounds are set forth here *in toto*:

1. State fail [sic] to produce substantive evidence and/or prove their case beyond a reasonable doubt and meet the prerequisite's [sic] to support the conviction under the corpus delicti rule and the said statutes [sic] of title 11301 and 222(5).

Supporting facts: Whether the state failed to provide [sic] their case beyond a reasonable doubt under the corpus delicti rule to support the conviction for attempted robbery with a deadly weapon charge. In their case in chief deprived the defendant to a fair trial under the 5th

² *Harris v. State*, 2005 WL 850421 (Del. Supr.).

³ *Id.* (affirming trial court's decisions regarding the first three issues brought by defendant on appeal and declining to consider defendant's ineffective assistance of counsel claim).

Amendment plus denial of his due process rights under the 14th Amendment.

2. Officers lack for investigatory stop.

Supporting facts: Whether the police had reasonable and articulable suspicion for investigatory stop of the defendant, violated his usca Amend 4 [sic] and Del,C Annotated Article 1 [sic] – 6 of title 11 Del c, 1902 [sic].

3. Officer failed to read Miranda Right time of arrest [sic].

Supporting facts: Whether the defendant 5th Amendment Right were violated by police when failed to administer defendant Miranda warning [sic] at time he was arrested and taken into custody.

4. Ineffective assistance of counsel.

Supporting facts: Whether counsel was ineffective when he failed to file a timely notice of appeal, which is his continued obligation pursuant to the Supreme Court rule 26A [sic] in violation of his 6th Amendment plus 14th Amendment due process rights.

Upon review of Defendant's motion, all of the above grounds are conclusory and, thus, the motion is **SUMMARILY DISMISSED**.

3. Superior Court Criminal Rule 6 (d)(4) provides that "[i]f it plainly appears from the motion for postconviction relief and the record of prior proceedings in this case that the movant is not entitled to relief, the judge may enter an order for its summary dismissal and cause the movant to be notified." Defendant's motion for postconviction relief will be summarily dismissed where no facts supporting Defendant's contentions are offered and the claims are conclusory.⁴

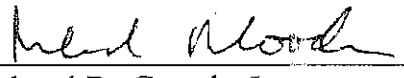
⁴ *State v. Cooper*, 2001 WL 1729147 (Del. Super.) (summarily dismissing defendant's claims of false testimony and ineffective assistance of counsel as defendant did not offer supporting facts and the claims were conclusory). See also *Jordan v. State*, 1994 WL 466142 (Del. Supr.); *State v. Brittingham*, 1994 WL 750341, * 2 (Del. Super.) (citing *Younger v. State*, 580 A.2d at 556 (holding that conclusory allegations are legally insufficient to prove ineffective assistance of counsel)).

4. Regardless of the fact that the grounds brought by Defendant in this instant motion are almost mirror images of the issues brought on direct appeal, Defendant's contentions here are completely conclusory as they are not supported by any facts in the record nor by any case law brought to the Court's attention by Defendant. They are merely reiterations of the issues already decided by the Delaware Supreme Court. Thus, Defendant's first three claims are **SUMMARILY DISMISSED**.

5. The one issue not decided by the Supreme Court, Defendant's ineffective assistance of counsel claim, is also conclusory because it points to no facts or case law in support. Thus, Defendant fourth ground for postconviction relief is conclusory and is **SUMMARILY DISMISSED**.

6. For the reasons stated, Defendant's Motion for Postconviction Relief is **SUMMARILY DISMISSED**.

IT IS SO ORDERED.



Richard R. Cooch, Jr.

cc: Prothonotary
cc: Investigative Services
cc: William T. Deely, Esquire

CERTIFICATE OF SERVICE

The undersigned, being a member of the Bar of the Supreme Court of Delaware, hereby certifies that on August 15, 2006, he caused two copies of the attached document to be placed in the U.S. Mail, first class postage prepaid, addressed to the following:

Lynn Harris
No. 297441
Delaware Correctional Center
1181 Paddock Rd.
Smyrna, DE 19977


Loren C. Meyers
Chief of Appeals Division
Dept. of Justice

1305005293

#43

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE
 IN AND FOR NEW CASTLE COUNTY
 STATE OF DELAWARE

Page 1

v.

LYNN HARRIS JR.

Name of Movant on Indictment

 IN03-05-0806-R1
 IN03-05-0808-R1
 IN03-05-0811-R1

Correct Full Name of Movant

)))))))

No. _____

(to be supplied by Prothonotary)

MOTION FOR POSTCONVICTION RELIEF**MOTION FOR POSTCONVICTION RELIEF****INSTRUCTIONS**

- (1) This motion must be legibly handwritten or typewritten, and signed by the movant under penalty of perjury.
- (2) All grounds for relief and supporting facts must be included, and all questions must be answered briefly in the proper space on the form.
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- (4) No citation of authorities is required. If legal arguments are submitted, this should be done in a separate memorandum.
- (5) Only convictions that were included in the same plea agreement or were tried together may be challenged in a single motion.
- (6) When the motion is completed, the original must be mailed to the Prothonotary in the county in which the judgment of conviction was entered. No fee is required.
- (7) The motion will be accepted if it conforms to these instructions. Otherwise, it will be returned with a notation as to the deficiency.

To return by mail:

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 500 N. King Street 38 The Green
 Suite 500, Lower Level 1 Dover, DE 19901
 Wilmington, DE 19801
 Sussex County Prothonotary
 P.O. Box 756
 Georgetown, DE 19947

MOTION**Page 2**1. County in which you were convicted NEWCASTLE2. Judge who imposed sentence RICHARD R.COOCH3. Date sentence was imposed APRIL 23,2004

4. Offense(s) for which you were sentenced and length of sentence (s):

ATTEMPTED ROBBERY PLUS PFDCF, TENYEARS.

5. Do you have any sentence(s) to serve other than the sentence(s) imposed because of the

judgment(s) under attack in this motion? Yes No

If your answer is "yes," give the following information:

Name and location of court(s) which imposed the other sentence(s):

Date sentence(s) imposed:

NONE

Length of sentence(s)

NONE

6. What was the basis for the judgment(s) of conviction? (Check one)

Plea of guilty Plea of guilty without admission of guilt ("Robinson plea") Plea of nolo contendere Verdict of jury Finding of judge (non-jury trial) 7. Judge who accepted plea or presided at trial RICHARD R.COOCH

8. Did you take the witness stand and testify? (Check one)

No trial Yes No 9. Did you appeal from the judgment of conviction? Yes No

If your answer is "yes," give the following information:

Case number of appeal NO. 193Date of court's final order or opinion APRIL 18,
2005

BZ

Page 3

10. Other than a direct appeal from the judgment(s) of conviction, have you filed any other motion(s) or petition(s) seeking relief from the judgment(s) in state or federal court?

Yes () No (X) How many? ()

If your answer is "yes," give the following information as to each:

Nature of proceeding(s)

NONE

Grounds raised

NONE

Was there an evidentiary

hearing? NONE

Case number of proceeding(s)

NONE

Date(s) of court's final order(s) or opinion(s)

NONE

Did you appeal the

result(s)? NONE

11. Give the name of each attorney who represented you at the following stages of the

proceedings relating to the judgment(s) under attack in this motion:

At plea of guilty or trial WILLIAM

DEELY

On appeal WILLIAM

DEELY

In any post conviction proceeding

12. State every ground on which you claim that your rights were violated. If you fail to set forth

all grounds in this motion, you may be barred from raising additional grounds at a later date. You

must state facts in support of the ground(s) which you claim. For your information, the following

is a list of frequently raised grounds for relief (you may also raise grounds that are not listed here):

double jeopardy; illegal detention, arrest, or search and seizure; coerced confession or guilty plea;

Page 4

uninformed waiver of the right to counsel, to remain silent, or to speedy trial; denial of the right to confront witnesses, to subpoena witnesses, to testify, or to effective assistance of counsel; suppression of favorable evidence; unfulfilled plea agreement.

B4

Page 5

Ground one: State fail to produce substantive evidence and / or prove their case beyond a reasonable doubt and meet the prerequisite's to support the conviction under the *corpus delicti* rule and the said statutes of title 11301 and 222(5).

Supporting facts (state the facts briefly without citing cases):

Whether the state failed to provide their case beyond a reasonable doubt under the *corpus delicti* rule to support the conviction for attempted robbery with a deadly weapon charge. In their case in chief deprived the defendant to a fair trial under " the 5th Amendment plus denial of his due process rights under the 14th Amendment.

Ground two: Officers lack for investigatory stop.

Supporting facts (state the facts briefly without citing cases):

Whether the police had reasonable and articulable suspicion for investigatory stop of the defendant, violated his usca Amend 4 and Del,C Annotated Constitution Article 1-6 of title 11 Del c, 1902.

Ground three: Officer failed to read Miranda Right time of arrest.

Supporting facts (state the facts briefly without citing cases):

Whether the defendant 5th Amendment Right were violated by police when failed to administer defendant Miranda warning at time he was arrested and taken into custody.

If any of the grounds listed were not previously raised, state briefly what grounds were not raised,

and give your reason(s) for not doing so:

Ground four: Ineffective assistance of counsel

Supporting facts / state facts briefly without citing case. Whether counsel was ineffective when he failed to file a timely notice of appeal, which is his continued obligation pursuant to the Supreme Court rule 26A in violation of his 6th Amendment plus 14th Amendment due process rights.

If any of the grounds listed were not previously raised, state briefly what grounds were not raised, and give your reason(s) for not doing so: N/A

Wherefore, movant asks that the court grant him all relief to which he may be entitled in this proceeding.

PRO-SE
Signature of attorney (if any)

I declare the truth of the above under penalty of perjury.

Date Signed

Signature of Movant
(Notarization not required)

forms/mtnpcr.wpRevised 9/2002

Ground one: _____

Supporting facts (state the facts briefly without citing cases):

Ground two: _____

Supporting facts (state the facts briefly without citing cases):

Ground three: _____

Supporting facts (state the facts briefly without citing cases):

If any of the grounds listed were not previously raised, state briefly what grounds were not raised, and give your reason(s) for not doing so: _____

Wherefore, movant asks that the court grant him all relief to which he may be entitled in this proceeding.

Signature of attorney (if any)

I declare the truth of the above under penalty of perjury.

3/19/06
Date Signed

Lynn Harris JR
Signature of Movant
(Notarization not required)

1	13	1	Q. Now, when you responded to the area, what	15
2		2	happened?	
3		3	A. As I responded, and we were en route to the	
4		4	area, I was coming from New Castle area, so I was	
5		5	coming south. And as I arrived, actually another	
6		6	unit arrived about the same time that I did. And	
7		7	these are going to be my patrol cars. But as we	
8		8	arrived, the other units stopped in the left lane,	
9		9	and I had stopped on this shoulder right here,	
10		10	because I noticed Mr. Harris walking northbound in	
11		11	the southbound shoulder. He was dressed in blue	
12		12	coveralls and a knit hat on his head.	
13		13	Q. Now, at that point, all right, did you place	
14		14	any significance on the knit hat?	
15		15	A. Yes, because I recall from the dispatch that	
16		16	subjects exiting the vehicle were wearing masks. And	
17		17	a lot of times, from prior robberies, subjects use a	
18		18	knit hat to cover their face to commit the robberies.	
19		19	They cut holes out in the mask, and they use those to	
20		20	cover their identity during the robberies.	
21		21	Q. Now, prior to arriving at the scene, I	
22		22	believe you indicated that there was a reference to a	
23		23	metal pipe?	
1	14	1	A. Correct.	16
2		2	Q. And what information specifically did you	
3		3	receive in reference to this metal pipe?	
4		4	A. Passed on through dispatch?	
5		5	Q. Yes.	
6		6	A. Dispatch advised that the person resided at	
7		7	this residence, stated that when they got out, they	
8		8	put the masks on. One of them grabbed the pipe from	
9		9	the vehicle, which she believed to be a pipe from the	
10		10	vehicle, and placed it inside, or placed it inside	
11		11	their clothing, and then began to walk towards the	
12		12	Pockets area.	
13		13	Q. Now, can you give us some idea of where this	
14		14	individual you initially stopped, how far was it from	
15		15	the intersection of North Dupont Highway?	
16		16	A. From right here. Again, this is not to	
17		17	scale, because I'm definitely not an artist; but he	
18		18	was standing on the shoulder right next to this,	
19		19	which would be the white solid line, just a few feet	
20		20	south of the intersection. It was enough that when I	
21		21	stopped him and after contacting him, I was able to	
22		22	look over and see the vehicle still parked in the	
23		23	driveway.	

1	Q. I want an approximation between where that	17	1 the parking lot is in front of the business, but	19
2	vehicle was and the individual that you stopped. I		2 north of the business.	
3	know it's diagonal.		3 Q. Can you describe the area between Pockets	
4	A. Approximately 50 feet there, and maybe ten,		4 and southbound 13?	
5	250 or so feet this way. So, um, maybe 75 feet or		5 A. Like I said, this is all tree area here,	
6	so, 100 feet.		6 this way. There's nothing that separates Pockets	
7	Q. Was there anything that obstructed your		7 from the southbound lanes of 13.	
8	view?		8 Q. Okay. Now, when you stopped this	
9	A. Nothing at all. Much not to scale here, but		9 individual, you stopped him on the shoulder; correct?	
10	when I got out, I may have had contact with him.		10 A. Correct.	
11	There's nothing right here that blocked my view.		11 Q. Can you describe the shoulder area?	
12	Like I said, the trees are in this area here. Um, I		12 A. It's a flat asphalt surface.	
13	was able to look right across and see the vehicle.		13 Q. Were there any other pedestrians or anybody	
14	Q. What's the approximation on that diagonal?		14 walking in that area?	
15	A. Diagonal, approximately 75 feet.		15 A. No, sir.	
16	Q. Could you put that in?		16 Q. Is that the kind of area that pedestrians	
17	A. Draw it in across here?		17 normally walk?	
18	Q. Sure.		18 A. No.	
19	A. (Corp. Slover complies.)		19 Q. Was this individual walking along the	
20	Okay.		20 highway without a light?	
21	Q. Now, what direction was this individual		21 A. Yes.	
22	walking?		22 Q. Now, can you tell the Court, please, what	
23	A. Northbound.		23 was in your mind right before you pulled over?	
1	Q. And would you reference that?	18	1 A. As I just came from the dispatch -- I mean,	20
2	A. (Corp. Slover complies.)		2 it was dispatch. It was subjects that placed masks	
3	Yes.		3 over their heads, and one of them placed a pipe in	
4	Q. Now --		4 their clothing. And they were walking from 325 South	
5	A. North.		5 Dupont to Pockets. Now, I knew that, obviously from	
6	Q. How far from this -- did you know how far		6 the dispatch, this vehicle -- these people weren't	
7	was this individual from Pockets when you stopped		7 supposed to be at 325 South Dupont Highway, okay?	
8	him?		8 They just placed masks over their heads, put a pipe	
9	A. A couple hundred -- I would say 150 feet		9 in -- what appeared to be a pipe inside their clothes	
10	maybe south of --		10 and were walking towards Pockets. From prior	
11	Q. So about 50 yards?		11 complaints, you know, it sounded like a robbery was	
12	A. 50 yards would be a good estimation. This		12 getting ready to happen at Pockets.	
13	is where Pockets would be, so I would say 150 feet.		13 Q. Can I ask you to stop a minute?	
14	Q. How far is Pockets from the northbound lanes		14 What significance did you place on the	
15	of Dupont Highway?		15 report from the reporting person that it appeared to	
16	A. Southbound lanes?		16 be a pipe? How did you interpret that?	
17	Q. Excuse me.		17 A. I know some people can -- you know, are not	
18	A. Approximately 50 feet. It basically sits		18 familiar with certain guns or any kind of weapons.	
19	right on the roadway. Approximately 50 feet off the		19 So the significance in a pipe is this could be a	
20	road.		20 weapon that this person put inside their clothing,	
21	Q. And is there a parking lot in front of		21 and this reporting person may not be able to	
22	Pockets?		22 determine that.	
23	A. Pockets actually faces this direction, and		23 Q. But what conclusions did you draw from all	

1	the circumstances available to you with regard to 2 that pipe description?	21	1 custody, took a hold of the shotgun. He had a gun. 2 I didn't want to go any further than what it already 3 has.	23
4	A. It could possibly be a shotgun.	4	Q. Did you pat him down?	
5	Q. Were you concerned for your safety at all when you stopped this individual?	5	A. At that point, I patted him down, and I actually felt the shotgun inside of his clothing, at 7 which time I unzipped the coveralls, removed the 8 shotgun from his clothing.	
6	A. Absolutely. Because like I said, my thinking is this person might have a shotgun on them. And when I pulled over to the shoulder, like I said, one unit was in the right lane, and I was on the shoulder. And this subject, Mr. Harris, was walking northbound, had the knit hat on, had coveralls on. Um, so I mean, I immediately got out of my vehicle, because, you know, I didn't -- at this point, I didn't know if he had a weapon on him or not, and I was concerned for my safety. I don't want to be sitting in a car when someone pulls out a weapon and I'm sitting there.	9	Q. And did you then take him into custody?	
10		10	A. Yes.	
11		11	Q. Now, is that individual in the courtroom today?	
12		12	A. Yes, he is.	
13		13	Q. Could you identify him, please?	
14		14	A. Mr. Harris is sitting here in the white DOCS (indicating).	
15		15	MR. WALTHER: Let the record reflect the witness has identified the defendant Lynn Harris also known as Ryant Harris. That's all I have.	
16		16	Your Honor, could I have that marked as an exhibit?	
17		17	THE COURT: You may. Mark it as State's 1.	
18		18	(State's Exhibit No. 1, a diagram, marked	
19		19		
20	A. Yes, Delaware State --	22		
21	Q. The other vehicle was whom?	22	1 for identification.)	24
22	A. Trooper McLaughlin.	22	2 THE PROTHONOTARY: So marked, Your Honor.	
23	Q. Was that also a marked police vehicle?	22	3 THE COURT: Thank you.	
		23	4 Mr. Deely, would you like Corporal Slover to remain by the diagram?	
		23	5 MR. DEELY: It'd probably be wise, Your Honor.	
		23	6	
		23	7	
		23	8	
		23	9	CROSS-EXAMINATION
		23	10	-----
		23	11	BY MR. DEELY:
		23	12	Q. Good afternoon, Corporal Slover.
		23	13	A. How are you?
		23	14	Q. Corporal Slover, do you remember what the weather was that night?
		23	15	A. Clear.
		23	16	Q. It was clear?
		23	17	A. I'm sorry. No. I was afraid of that one.
		23	18	It was raining very bad that night. It was dark out.
		23	19	And I remember being drenched that night from being out in the rain, from being out on the scene that
		23	20	night.
		23	21	
		23	22	
		23	23	Q. It was a cool evening, wasn't it?

1 .A. I don't remember the temperature, but I do	25	1 Q. So a pipe, in your mind, represented a
2 remember being drenched that night.		2 shotgun?
3 Q. Do you remember exactly what the RECOM call		3 A. Well, it could. For example, to some folks'
4 said?		4 eyes, it could, yes.
5 A. Well, I believe -- word for word, I don't		5 Go ahead. I'm listening. I'm sorry.
6 recall beyond that, but I believe I described that --		6 Q. You responded to the scene, and you and
7 Q. Let me go through it. How many people got		7 Trooper McLaughlin drove up to the intersection. You
8 out of the car at 325 Dupont Highway for the RECOM		8 saw one individual; is that correct?
9 call?		9 A. Yes.
10 A. According to RECOM, I don't recall exactly		10 Q. And you didn't see anybody else at that
11 how many got out of there.		11 intersection, did you?
12 Q. More than one?		12 A. No.
13 A. Yes.		13 Q. And you said that you had a clear view over
14 Q. More than two?		14 to 325 South Dupont; is that correct?
15 A. I don't recall exactly -- the exact number.		15 A. Yes.
16 Q. But it was more than one?		16 Q. Could you see the car that was parked in the
17 A. Yes.		17 driveway?
18 Q. Did it say where the individuals went? Did		18 A. Yes.
19 RECOM tell you where they went?		19 Q. Could you see if there was anybody in the
20 A. Northbound. They're walking towards		20 car?
21 Pockets.		21 A. No.
22 Q. Did they say anything else, give you any		22 Q. But you had a clear view?
23 description at all?		23 A. Yes.
1 A. Description of the subjects?	26	1 Q. But you couldn't tell if there was anybody
2 Q. Yes.		2 in the car?
3 A. No. They just -- what they dispatched to us		3 A. It was dark, and it was raining.
4 was the subjects.		4 Q. Now, you knew that from RECOM. Did they
5 Q. You don't know if they were white or black,		5 tell you the car was parked in the driveway?
6 or tall or short?		6 A. Yes.
7 A. No, sir.		7 Q. So you knew that car may be involved; is
8 Q. Skinny or fat?		8 that correct?
9 A. No.		9 A. Yes.
10 Q. So you had no idea what they looked like?		10 Q. So as you, Trooper McLaughlin stopped
11 A. No.		11 Mr. Harris on the street, one of you go over to 325
12 Q. All you knew was, there was more than one		12 South Dupont?
13 individual; isn't that correct?		13 A. Not at this point, because my main concern
14 A. Yes.		14 was Mr. Harris.
15 Q. I'm going to go back to something you stated		15 Q. Well, he's an individual. He's not in a
16 on direct, when they said -- the dispatch said that		16 group. There's nobody else around him.
17 one of the individuals put what they believe was a		17 A. Right. He's walking northbound, as
18 pipe in their pants.		18 explained from the dispatch, wearing a knit hat on
19 A. Yes.		19 his head. And, um, like I said, he had coveralls on.
20 Q. And is it your testimony here today that		20 I thought that's possibly, you know, going to be the
21 when somebody had put a pipe down their pants, you		21 guy with the pipe inside his clothing, so I'm --
22 immediately thought it was a shotgun?		22 Q. I'm sorry?
23 A. I did, yes.		23 A. -- so my thoughts were directly on him. My

<p>1 concerns were on him. Hey, let's make sure that 2 this -- you know, this is going to be our guy. 3 Q. Did dispatch tell you if the people in 325 4 were continuing to observe anyone? 5 A. At which point? 6 Q. After they called up and said a number of 7 people got out of the car, put on what appeared to be 8 masks, somebody put pipes in their pants, where did 9 they say they went? 10 A. Northbound -- 11 Q. Northbound? 12 A. -- towards Pockets. 13 Q. <u>Did they say they could see them or lost</u> 14 <u>sight of them?</u> 15 A. Our dispatch, they walked northbound towards 16 Pockets, and they lost sight of them at that point. 17 Q. But what you're telling us -- and that was 18 about five to ten minutes before you arrived on the 19 scene? 20 A. Yes. 21 Q. But what you're telling the Court here today 22 is that there was a clear view from 325 to where 23 Mr. Harris was; is that correct? </p>	<p>29 MR. DEELY: May I approach, Your Honor? 2 THE COURT: Yes, you may. 3 (Demonstration held.) 4 BY MR. DEELY: 5 Q. This is the front of the house. 6 A. Yes. Wherever you're standing, off this 7 road or up over here, yes. 8 Q. So if there were windows in the front of 9 this house, are there some windows? 10 A. I don't remember exactly. 11 Q. Let me put it this way: If there was a 12 window in the front of this house, and they were 13 looking at this intersection, would they be able to 14 see Mr. Harris? 15 A. Yes. 16 Q. Unobstructed; is that correct? 17 A. Yes. 18 Q. So he wouldn't be out of their view; is that 19 correct? 20 A. Yes. 21 Q. So he wouldn't have gotten out of their 22 view; is that correct? 23 A. Yes. </p>
<p>1 A. To where Mr. Harris was, yes. 2 Q. So they wouldn't have lost sight of 3 Mr. Harris? 4 A. I don't know that. 5 Q. Well, you said it was unobstructed, the 6 windows in front of the house. 7 A. I don't recall if there were. 8 Q. You said the view was unobstructed, at 325. 9 A. The view from myself to the vehicle was 10 unobstructed, yes. 11 Q. Could you see the house? 12 A. Yes, I could see the house. 13 Q. The view was unobstructed to the house; 14 correct? 15 A. My view to the house was -- 16 Q. Somebody looking out, their view would be 17 unobstructed? 18 A. I don't know whether they're looking from in 19 the house, so I can't... 20 Q. If they're looking out the front of the 21 house, I assume the front -- 22 A. If they're standing on the outside, looking 23 across -- </p>	<p>30 32 Q. So you now pull up next to Mr. Harris. You activate your lights; is that correct? A. Yes. Q. What do you say to Mr. Harris? A. Well, as I exit my vehicle -- Q. Before you exit the vehicle, did you say anything? A. I didn't say anything to him. Q. You pulled up next to him. What did he do? A. Like I said, he was standing kind of in between our vehicles. Our vehicles were closer than this. There was only a few feet in between our vehicles, but I immediately exited my vehicle. Q. Let's back up -- A. Sure. Q. -- please. When you drove up, Mr. Harris was standing at the intersection? A. No, just -- Q. Just north? A. -- north. Q. A few feet. You pulled up next to him and Corporal McLaughlin drove on the opposite side? </p>

1	A. He's facing me. So I advised him to turn	37	1	Corporal Slover, do you have your police	
2	around. So he's looking, like, this way.		2	report?	
3	Q. Towards Trooper McLaughlin's car?		3	A. Yes, it's up -- may I approach?	
4	A. Well, this is McLaughlin's car over here.		4	MR. DEELY: May he get it, Your Honor?	
5	So he's looking, I guess it would be south.		5	THE COURT: Yes.	
6	Q. So you said, "Turn around."		6	(Pause.)	
7	A. Yes.		7	(Corp. Slover retrieves report.)	
8	Q. Did he turn around?		8	BY MR. DEELY:	
9	A. Yes.		9	Q. If you would look at the third paragraph of	
10	Q. Did you tell him to stop, don't move?		10	your investigative narrative.	
11	A. No.		11	A. (Corp. Slover complies.)	
12	Q. You just got out of your car and said, turn		12	Sure.	
13	around?		13	Q. Did you say that one of the first things you	
14	A. I said, turn around. And he had turned		14	said was, you advised the defendant to remove his	
15	around. And when he turned around, I asked him if he		15	hands from his pockets?	
16	had any weapons on him. Before I ever patted him		16	A. Yes.	
17	down, he said he had a shotgun on him.		17	Q. So you didn't only say "turn around."	
18	Q. So did you ask him his name?		18	A. Well, no, I guess I didn't only say "turn	
19	A. At that point, I wasn't concerned about his		19	around," no.	
20	name. I wanted to make sure he didn't have a weapon		20	Q. I'll go through the specifics with you	
21	on him.		21	again, okay?	
22	Q. So the very first words out of your mouth		22	You pulled up next to him?	
23	when you got out --		23	A. Mm-hmm.	
1	A. Absolutely.	38	1	Q. You got out of your car?	40
2	THE COURT: Wait a minute. Let each other		2	A. Mm-hmm.	
3	finish.		3	Q. The first words out of your mouth were what?	
4	MR. DEELY: I understand.		4	A. I advised him to remove his hands from his	
5	THE COURT: Answer when he's done asking the		5	pockets.	
6	question.		6	Q. Did he comply?	
7	BY MR. DEELY:		7	A. Yes.	
8	Q. You got out of your car and immediately		8	Q. So his hands were in plain view at that	
9	said, turn around?		9	time?	
10	A. Yes.		10	A. At that time, yes.	
11	Q. And he complied?		11	Q. And then you told him to turn around?	
12	A. Yes.		12	A. Yes.	
13	Q. And the next thing you did was, you started		13	Q. He turned around?	
14	to search him?		14	A. Yes.	
15	A. I asked him if he had any weapons on him.		15	Q. And without asking any further questions as	
16	Q. And he said, "Yes, I have a shotgun"?		16	to what he was doing or why he was there, you began	
17	A. Yes.		17	to search him immediately?	
18	Q. That's your testimony here today?		18	A. Yes.	
19	A. Yes.		19	Q. Up to that point, up to that point, had you	
20	MR. DEELY: May I have a moment, Your Honor?		20	seen any suspicious activity, other than the fact	
21	THE COURT: Yes.		21	that he had a knit cap and he was walking on the side	
22	(Pause.)		22	of the highway?	
23	BY MR. DEELY:		23	A. No.	

<p>1 Q. You made a statement on direct that walking 2 on the side of the highway was not a normal place for 3 pedestrians; is that correct?</p> <p>4 A. Correct.</p> <p>5 Q. Where would pedestrians normally walk in 6 that section of the highway if they were heading 7 northbound?</p> <p>8 A. Well, they would be more over towards the -- 9 I guess right, or west. I mean, they wouldn't be 10 walking right on the roadway.</p> <p>11 Q. He wasn't on the roadway itself. He was on 12 the shoulder.</p> <p>13 A. He was walking a foot off the white line. 14 He's two feet from the vehicles going southbound on 15 13.</p> <p>16 Q. But he was off the shoulder. He was on the 17 shoulder of the road.</p> <p>18 A. He was on the shoulder.</p> <p>19 Q. He was in the place where normal pedestrians 20 would walk if they were walking northbound on Route 21 13?</p> <p>22 A. Not in my opinion.</p> <p>23 Q. Well, he's on the shoulder of the road.</p>	<p>41 1 Q. Would you read the sentence to the Court, 2 starting with, "As I began"?</p> <p>3 A. As I began to pat him down, "D" stated that 4 he had a shotgun inside his clothing.</p> <p>5 Q. That's different from what you testified to 6 earlier. What you testified to earlier was -- let me 7 finish the question --</p> <p>8 A. Go ahead.</p> <p>9 Q. -- was that you got out of your car, told 10 him to turn around, amended that to, hands are in 11 plain view. Then you told him to turn around, and at 12 that time you began to pat him down. Is that your 13 testimony now?</p> <p>14 A. I went to pat him down, yes.</p> <p>15 Q. And as you were patting him down -- as you 16 began to pat him down, he said, "I have a shotgun in 17 my pants"?</p> <p>18 A. No. As I began -- went to pat him down, as 19 I began, he stated that he had shotgun in his 20 clothing.</p> <p>21 Q. Well, he's not looking at you, so he doesn't 22 know you're beginning to pat him down. He doesn't 23 know what you're doing behind him.</p>
<p>42 1 Isn't that where people are supposed to walk?</p> <p>2 A. Yeah, but he's on the -- a foot off the -- 3 off the solid white line. He's two feet from 4 vehicles traveling at 50 miles an hour southbound.</p> <p>5 Q. And you found that suspicious?</p> <p>6 A. I found that that's not where I would walk.</p> <p>7 Q. Did you find it suspicious?</p> <p>8 A. No. I mean, that's not suspicious, but 9 that's not what you asked me.</p> <p>10 Q. So if he was three feet off the side of the 11 road, that would have been okay, in your opinion?</p> <p>12 A. No, if he was more towards where the asphalt 13 meets the grass area.</p> <p>14 Q. Now, in that same paragraph, the next 15 sentence says, "As you began to pat him down"; 16 is that correct?</p> <p>17 A. Yes.</p> <p>18 Q. It says, "At that time, Mr. Harris advised 19 there was a shotgun in his clothing"?</p> <p>20 A. Yes.</p> <p>21 Q. It was not before you began to pat him down, 22 was it?</p> <p>23 A. Yes.</p>	<p>42 1 You're behind him at this point; right? Is 2 it your testimony now he's facing away from you, and 3 not knowing what you're doing or what you're going to 4 ask him?</p> <p>5 He says, "I have a shotgun in my clothes"?</p> <p>6 A. Yes. I mean, as I explained to you, I 7 always ask people -- and as I did that night -- do 8 you have any weapons on you? And as I began to pat 9 him down, he stated he had a shotgun.</p> <p>10 Q. What does "begin" mean? You touched him?</p> <p>11 A. No, it doesn't.</p> <p>12 Q. What does it mean?</p> <p>13 A. As I began, as I went to, same thing. I 14 just used a different word there, as I began.</p> <p>15 Q. So you walked up?</p> <p>16 A. If I was touching him, that would be during 17 a patdown.</p> <p>18 Q. So you walked up to the individual, said, 19 "Take your hands out of your pockets." His hands are 20 in plain view?</p> <p>21 A. Correct.</p> <p>22 Q. Okay. Did you tell him to do anything with 23 his hands after he took them out of his pocket?</p>

	45		
1	'A. I don't recall.		1 follows all your orders. You've seen no suspicious
2	Q. But they're in plain view at that point?		2 activity from this defendant. You don't know if he
3	A. They're in plain view.		3 matches the description that was called in. Are all
4	Q. Trooper McLaughlin is in the car next to		4 these things true up to this point?
5	you?		5 A. Other than matching the description, the
6	A. Yes.		6 knit hat on his head.
7	Q. And he's watching what you're doing?		7 Q. And you immediately begin to pat him down?
8	A. I would assume.		8 A. Correct.
9	Q. Hope so?		9 MR. DEELY: No further questions,
10	A. Right. Exactly.		10 Your Honor.
11	Q. The procedure would be for him to be		11 -----
12	watching; is that correct?		12 REDIRECT EXAMINATION
13	A. Correct.		13 -----
14	Q. Did he get out of his car?		14 BY MR. WALTHER:
15	A. I don't recall at that point, because my		15 Q. Defense counsel asked you about whether the
16	attention was directed at Mr. Harris.		16 occupant of 325 South Dupont Highway had an
17	Q. Now, Mr. Harris is standing there with his		17 unobstructed view from his front windows. Do you
18	hands out?		18 recall those questions?
19	A. Yes.		19 A. As he asked, unobstructed view to where I
20	Q. You had him turn around. You haven't asked		20 stopped Mr. Harris.
21	him his name or anything at this point?		21 Q. Okay. From the front of the --
22	A. Correct.		22 A. From the front of the house, if the house
23	Q. Is that correct?		23 had windows in the front, which I don't know.
	46		
1	A. Yes.		1 Q. Do you have any idea whatsoever, prior to
2	Q. And you immediately begin to search him?		2 the stop, where the location of the reporting person
3	A. Yes.		3 was at the time that he was reporting this
4	Q. Even though your report was -- there were		4 information?
5	several people. You got one individual, who is		5 A. Other than at 325 South Dupont, I don't
6	walking innocently at this point. You see no		6 know. That's what I explained to the defense
7	suspicious activity; is that correct?		7 counsel.
8	A. That's correct.		8 Q. Right. So if he was on the front step -- is
9	Q. He complied with all your commands; is that		9 there a driveway or what?
10	correct?		10 A. Exactly.
11	A. Yes.		11 Q. As you approached the vehicle, as you went
12	Q. And even the fact he complied with all the		12 out, what were the first words you said, as you
13	commands, you made no attempt to find out what he was		13 recall today, to the defendant?
14	doing in the area?		14 A. As I recall --
15	A. At that point, my attention was solely on if		15 Q. Uh-huh.
16	he had a weapon, okay? I wanted to go home. It's		16 A. -- I had stated -- um, well, in my report,
17	at night. So I want to make sure he doesn't have a		17 which I stated that night, because I wrote this
18	weapon on him. I don't want this weapon to come out		18 report. Back then was, "Remove your hands from your
19	and fire at me and..."		19 pockets." He had his hands in his pockets, and I
20	Q. I want to re-set the scene.		20 stated to him, "Do you have any weapons on you -- I'm
21	A. Sure.		21 sorry. I asked him to turn around, and stated, did
22	Q. Two police officers, lights going, two		22 he have any weapons on you. And, um, at which time,
23	police officers with guns, defendant is compliant,		23 I went to pat him down. He stated that he had a

<p>1 shotgun inside his clothing.</p> <p>2 Q. Before you laid a hand on him, did he tell 3 you he had a shotgun?</p> <p>4 A. Yes.</p> <p>5 MR. WALTHER: Nothing further -- excuse me.</p> <p>6 May I ask one more question?</p> <p>7 THE COURT: Yes.</p> <p>8 BY MR. WALTHER:</p> <p>9 Q. The information that you received from the 10 RECOM dispatcher with regard to this reporting 11 person, was that person ultimately interviewed and 12 cooperated in the investigation?</p> <p>13 A. Yes.</p> <p>14 Q. It wasn't an anonymous call, was it?</p> <p>15 A. No.</p> <p>16 MR. WALTHER: Nothing further.</p> <p>17 -----</p> <p>18 RECROSS-EXAMINATION</p> <p>19 -----</p> <p>20 BY MR. DEELY:</p> <p>21 Q. Officer, you just stated on redirect that 22 you didn't know where the people reporting out of 325 23 were as they were calling into the police; is that</p>	49	<p>1 A. No.</p> <p>2 Q. You got out of the car and said, "Take your 3 hands out of your pockets"?</p> <p>4 A. Yes.</p> <p>5 Q. And then you said, "Turn around"?</p> <p>6 A. Yes.</p> <p>7 Q. And he complied in both cases?</p> <p>8 A. Yes.</p> <p>9 Q. At that time, you believed that he was a 10 suspect in a crime; is that correct?</p> <p>11 A. Yes.</p> <p>12 Q. And at that time, knowing he was a suspect 13 in a crime, and that he was not free to leave, did 14 you read him his Miranda rights --</p> <p>15 A. No.</p> <p>16 Q. -- but secured him, a question that may well 17 incriminate him in that crime that you were 18 investigating; is that correct?</p> <p>19 A. Yes, I asked him a question.</p> <p>20 MR. DEELY: No further questions,</p> <p>21 Your Honor.</p> <p>22 MR. WALTHER: Nothing further, Your Honor.</p> <p>23 THE COURT: You may step down.</p>	51
<p>1 correct?</p> <p>2 A. Correct.</p> <p>3 Q. But we do know they said they watched him go 4 in a certain direction?</p> <p>5 A. Correct.</p> <p>6 Q. And the car was in the driveway toward the 7 front of the house?</p> <p>8 A. Correct.</p> <p>9 Q. So to see what direction they went, they 10 head northbound, a place where they could be looking, 11 northbound; is that correct?</p> <p>12 A. Correct.</p> <p>13 Q. Okay. So we don't know precisely where they 14 were standing, but we know generally what view they 15 had; is that correct?</p> <p>16 A. Correct.</p> <p>17 Q. When you stopped Mr. Harris, you stated that 18 you pulled your car up beside him, and Trooper 19 McLaughlin pulled up his car. At that point, he was 20 not free to leave; is that correct?</p> <p>21 A. Yes.</p> <p>22 Q. Did you tell him to stop or halt or anything 23 to that effect?</p>	50	<p>1 CORP. SLOVER: Thank you, Your Honor. (Corp. Slover excused.)</p> <p>2 MR. WALTHER: May I speak to counsel for 3 just a second?</p> <p>4 THE COURT: Yes. (Counsel conferring.)</p> <p>5 MR. WALTHER: State calls Detective Daniel 6 Bramble.</p> <p>7 -----</p> <p>8 DET. DANIEL I. BRAMBLE, having been called 9 on the part and behalf of the State, having been duly 10 sworn according to law, was examined and testified as 11 follows: 12 -----</p> <p>13 MR. DEELY: Excuse us, Your Honor. (Counsel conferring.)</p> <p>14 MR. WALTHER: We are not going to be able to 15 agree on this. I intend to offer into evidence the 16 9-1-1 call and dispatch. I believe it's relevant for 17 purposes with regard to this, not -- well, first of 18 all, it's relevant with regard to the issue of 19 reasonable and articulable suspicion, because it has 20 what's dispatched. But in addition to that, it also 21</p>	52

<p>1 has the two individuals from 325 South Dupont Highway 2 who actually called in it, stayed on the line. And I 3 believe that is relevant as to not only that they did 4 that, they called up a second time to establish that, 5 one, they're not anonymous callers, and this 6 continues between the anonymous caller and the one 7 citizen.</p> <p>8 MR. DEELY: We will stipulate whether 9 they're anonymous, Your Honor.</p> <p>10 MR. WALTHER: I'll make a record of this. 11 The difference between anonymous at this point and a 12 citizen who, technically, there's a crime being 13 committed on his property, criminal trespass, who 14 makes a call, and cooperating with the police, that 15 goes to credibility, reliability, which I believe is 16 an issue.</p> <p>17 MR. DEELY: Your Honor, we will stipulate 18 that the call was not anonymous.</p> <p>19 My problem with the playing of the 9-1-1 20 tape is the reasonableness of a stop-and-search 21 seizure is based upon the information that the 22 officer has at the time of such search and seizure, 23 not information that may be available at a later</p>	<p>53 RECOM, with respect to the observations that were 2 communicated from the residence of 325 South Dupont 3 on the basis that they were not anonymous, a 4 proven-reliable tipster from -- 5 MR. DEELY: Name, address, all that 6 pertinent information, and we're available for 7 further investigation as to what he testified. 8 What I'm arguing here is that there's 9 information that was given to RECOM that, evidently, 10 was not given to the officer. And the officer has 11 stated what information he had and what information 12 that he used in order to make the stop and/or 13 seizure, and/or search and/or arrest. 14 The fact that there was more information 15 available that he didn't have is immaterial for 16 purposes of this hearing. 17 That's my argument, sir. 18 THE COURT: All right. 19 MR. WALTHER: It seems to me, Your Honor, 20 the State has the burden. And the State certainly 21 can present its case in a manner, one, that presents 22 its best case; and two, presents a picture to the 23 Court, Your Honor, since you're the fact finder in</p>
<p>54 date. Therefore, there's information on the tape 2 that may well go toward what the officer -- after the 3 fact, whether the officer had probable cause or 4 reasonable suspicion. But the fact of the matter is 5 that the officer has testified as to what he knew at 6 the time, and that's pertinent to the issue, what did 7 he know at the time that he made the stop and seizure 8 and conducted a search or didn't conduct a search, 9 not what evidence was found after the fact that may 10 buttress that. So, if somebody works on a hunch, 11 goes back and finds out a crime was committed, you 12 can't arrest people based on a hunch.</p> <p>13 So my objection to the tape is not that it's 14 inaccurate or that it's anonymous. My objection to 15 the tape is, it gives far more information that the 16 officer didn't have at the time. And the officer now 17 testified as to what he knew at the time of the stop 18 and the arrest.</p> <p>19 THE COURT: All right. Let me just make 20 sure that I'm clear on your position, though. You 21 are not intending to argue at any point in time that 22 the officer was not entitled to rely upon, without 23 equivocation, the information that he received from</p>	<p>55 this case with regard to the totality of the 2 circumstances surrounding the stop. 3 The tape is being offered for probable 4 cause. That is the information that Officer Slover 5 had in his possession, in his mind, plus any 6 reasonable inferences that he could draw from that, 7 including public-safety reasons. But in addition to 8 that, the State can also present it because, in the 9 best way possible, um, that the information is 10 reliable and credible on the issue. It clearly makes 11 a distinction between whether or not it's an 12 anonymous call, or a citizen complaint, a crime in 13 the progress. And I think that I should be permitted 14 to do that the best way I can. And the State 15 suggests that the best way to do that is actually 16 listen to the person making the call. 17 MR. DEELY: I don't mean to beat a dead 18 horse. I think it's exactly wrong. We have the 19 officer who conducted the stop and the arrest present 20 in court. It's what was in his mind at the time of 21 that stop and arrest, whether this is -- it was a 22 reasonable, probable cause or reasonable suspicion 23 existed. It's not what was on tape and told to RECOM</p>

<p>1 grounds to suspect a crime is committing, has 2 committed, or about to commit a crime. We can 3 concede based on the call that it may be reasonable 4 to think he may be involved with this group of 5 people, whoever it was based on, the time of night 6 and totality of the circumstances, but it goes 7 further to say that. And he may demand the person's 8 name, address, business abroad and destination. What 9 we have in this case is none of those things were 10 done by this officer, zero. He stopped him and 11 searched him.</p> <p>12 Would it have been reasonable to say: "Who 13 are you?"</p> <p>14 "Bryant Harris."</p> <p>15 "Do you have identification?"</p> <p>16 "Yes."</p> <p>17 "Where are you headed, Mr. Harris?"</p> <p>18 He could have said, "I'm on my way to 19 Pockets to have a drink."</p> <p>20 There are lots of reasons why a pedestrian 21 may be in that area at that time of night. The area 22 didn't -- he never saw pedestrians walk. A person 23 could be walking to that commercial establishment.</p>	<p>73</p> <p>1 facts in that situation, that leads him, a reasonable 2 officer, to believe this person may be armed. The 3 specific person may be armed. It must be more than a 4 hunch. The officer testified, when he heard about a 5 pipe, he got a hunch it might -- he didn't use the 6 word hunch. He had a hunch it might be a shotgun. 7 That's a hunch. There's no actions. He didn't say 8 he saw the client limping as he was walking. He saw 9 him reach for a weapon. He saw him do no furtive 10 actions. He saw him do nothing but walking down the 11 street. He stopped him, didn't ask any questions. 12 He orders him to turn around and began a search. 13 That doesn't comport with either Terry or 1902, under 14 Delaware law. There was made a big deal about the 15 area, and it's a high-crime area. I haven't been in 16 a case where we didn't spend a lot of time on that. 17 Obviously, a high-crime area is purely subjective. 18 And the fact that it's a high-crime area, using that 19 logic, any person in the parking lot at Pockets could 20 be arrested and stopped if they got a call somebody 21 was doing something at Pockets parking lot or had 22 been. There's just no facts in this case, even 23 though the officer had a right to stop him, the</p>
<p>1 The officer failed to follow 1902 is very specific. 2 1902 has been ruled in Delaware Supreme Court to be 3 the same as a Terry stop, but Delaware added 4 additional protections for the defendant.</p> <p>5 In addition, Your Honor, the information 6 that the officer had at the time of the stop was that 7 there were multiple subjects. He only saw one. The 8 person was on the highway, not where they had said 9 that the subjects had left. The officer had a hunch 10 that there might be a weapon. But he certainly had 11 no articulable suspicion based on any actions by the 12 defendant or what the defendant was doing to suspect 13 anything. It was a cold, rainy, night -- correction, 14 it was a rainy night. The officer doesn't remember 15 what the weather was. It was damp and dreary. He 16 had a knit cap on his head. That's it. Beyond that, 17 once the client was in custody, once Mr. Harris was 18 in custody, the officer began an interrogation 19 without reading Miranda rights. The officer has all 20 control at that time. What was the purpose of 21 asking, do you have a weapon? He can search the 22 person and find the weapon if he has reasonable 23 articulable suspicion, and can point to identifiable</p>	<p>74</p> <p>1 officer had a right to talk to him. The officer had 2 a reasonable suspicion at that point. He can't 3 conduct a search without going beyond that initial 4 reasonable suspicion. And Delaware codified that he 5 must ask him specific questions outlining what the 6 person is doing. As I said, he didn't give 7 Mr. Harris an opportunity to explain anything. He 8 sees him. He searched him. He questioned him 9 without reading him his rights, based on a hunch, 10 with no actions on Mr. Harris's part to indicate that 11 he may, in fact, be armed. And he wasn't in a group 12 of people, which is the only information that the 13 officer had at the time that he got the call.</p> <p>14 MR. WALTHER: The defense seems to imply 15 that the fact that the officer did not have a 16 two-hour detention and have questions is fatal to the 17 issue of reasonable articulable suspicion. And it's 18 true that the -- that the State legislature has 19 codified it, but the Supreme Court of Delaware, in 20 Jones and Flomerry and subsequent cases, has said 21 that that Delaware two-hour detention statute, as 22 read in its entirety, means a reasonable and 23 articulable suspicion. So, I think, the argument</p>

1 that he did not ask those questions is not fatal, as
 2 long as there's a reasonable articulable suspicion
 3 prior to the Terry type of patdown, nor is it fatal
 4 to the State's case that before he patted him down,
 5 he asked him if he had a weapon, and that is
 6 uncontested. The defendant responded, yes, he did
 7 have a weapon. He was patted down and the weapon was
 8 found. I believe all those factors are sufficient
 9 for a reasonable articulable suspicion, keeping in
 10 mind that the burden the State has, keeping in mind
 11 that reasonable articulable suspicion is less than
 12 probable cause.

13 MR. DEELY: Your Honor, very briefly.

14 If the search is illegal for a weapon, Terry
 15 is very specific; you must believe there's a weapon,
 16 and you must have articulable facts to state that
 17 there's a weapon. The officer stated none, except
 18 that he had a hunch. Terry requires a specific fact
 19 when he got the call. He heard about a pipe, thought
 20 it might be a shotgun. Nothing, when he stopped the
 21 individual, gave him any indication that the
 22 individual was armed. He did not ask him any
 23 questions. He didn't do anything else for the State

77 1 have the reliability of the information that was
 2 being communicated to RECOM and, in turn,
 3 communicated to the officer. I am satisfied that
 4 this is not a case that should be analyzed under the
 5 anonymous-tip line of cases, that the information
 6 received by RECOM was reliable information, ongoing
 7 information, as events were unfolding. So I don't
 8 believe that those cases are instructive.

9 Having said that, there are references in
 10 the tape to descriptions of the individuals involved
 11 that did not get communicated to Corporal Slover,
 12 particularly the race of the individuals, and one
 13 reference to black or dark clothing. That was not
 14 communicated to Corporal Slover. And, therefore, the
 15 Court is not going to consider that information in
 16 the total mix of information available to Corporal
 17 Slover that would have enabled him to form a
 18 reasonable suspicion that a crime has been committed
 19 or about to be committed. So that is my ruling with
 20 respect to the admissibility of the tape. Part of it
 21 is admissible, part of it is not, and the Court has
 22 not considered that portion.

23 The standard of proof is preponderance of

78 1 to attempt to bootstrap, after an illegal search or
 2 an illegal search is being conducted, after an
 3 illegal questioning is being conducted; to bootstrap
 4 that as a consent to search just doesn't fly.

5 Thank you.

6 MR. WALTHER: What the defense calls a hunch
 7 is what the State refers to as reasonable inferences
 8 from objective facts based upon the training and
 9 experience of the officer.

10 THE COURT: All right.

11 First, the Court reserved its decision with
 12 respect to the tape that was marked as State's
 13 Exhibit 2, so that I could hear the tape and
 14 understand more fully what was on the tape and
 15 understand the concerns addressed by defense counsel.

16 Before we began listening to the tape, the
 17 defense acknowledged that this is not a tipster case,
 18 or at least some willingness to stipulate to that; we
 19 were not willing with an anonymous tip, and,
 20 therefore, unreliable information.

21 I heard Mr. Walther just say, well, we
 22 appreciate the stipulation, but we ought to be
 23 allowed to demonstrate to you, with the evidence, we

80 1 the evidence. The State has the burden to carry that
 2 standard of proof. And it's against that standard
 3 the Court must weigh the evidence. There are two
 4 steps. One is the initial approach, stop and
 5 detention, if you will. The second is the search.
 6 Counsel has referred to 1902. That certainly
 7 addresses the Terry detention, or the Terry stop.

8 1903 is the state that addresses the
 9 subsequent search that was done. I am not prepared
 10 to rule, as a matter of law, that a 1903 search
 11 cannot occur until the 1902 questions are asked. I
 12 can envision any number of circumstances where that
 13 would simply be unrealistic, given the dynamics of a
 14 particular police encounter with a suspect. The
 15 purpose of the Terry search, codified in 1903, is to
 16 preserve the safety of the officer and any
 17 individuals who may be in the area of the encounter,
 18 and requiring officers to recite questions before
 19 they search a suspect, in certain instances, is not a
 20 reasonable requirement. The standard for both a stop
 21 and a search is the same, and that is a reasonable
 22 ground to suspect, or, in federal jurisprudence,
 23 reasonable suspicion which, I believe, is the same

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1 Q. Uh-hmm.

2 A. Never walked to the store with Paul. I never
 3 walked to Pockets with Paul.

4 Q. Okay. Where did you go when you got out of the
 5 car?

6 A. Up the other end and around. I never touched
 7 the highway until I was walking back.

8 Q. Okay. When you say "up the other end and
 9 around," I'm going to refer you to State's Exhibit
 10 No. 4, are you talking about going up this way? Towards
 11 the back?

12 A. Yes.

13 Q. And the reason you went up that way is because
 14 that's a secluded, dark area and you didn't want anybody
 15 to see you, right?

16 A. Yes.

17 Q. And where did Dekelvin Townsend go?

18 A. All three of us walked together except for
 19 Paul.

20 Q. All right. What route did Paul go?

21 A. Highway.

22 Q. All right. So he came up the highway, went in,
 23 checked it out. You guys went this back way, okay?

26

1 you come from the back of Pockets, this area over here,
 2 the grassy area with the trees, and you meet up with
 3 him, right?

4 A. Yes, I was in the woods, not all the way in,
 5 the end of the woods.

6 Q. All right. And he says to you there's some
 7 people in there, right?

8 A. Two clerks.

9 Q. That's it, just two clerks?

10 A. That's it.

11 Q. That's -- I'm a little confused. All right?

12 You had already planned to commit a robbery with a
 13 weapon, and you decided not to commit the robbery
 14 because there were two clerks there?

15 A. No.

16 Q. Is that what you're saying?

17 A. I decided not to commit the robbery because we
 18 all were endangering each other's lives and individuals
 19 that would also be in there.

20 Q. Well, how is your life in danger when you have
 21 a loaded shotgun?

22 A. How was my life in danger?

23 Q. You were the one with the gun, right?

28

1 A. Yes.

2 Q. And then at some point you come over to this
 3 area over here on State's Exhibit No. 4, which appears
 4 to be on the DuPont Highway side of Pockets, correct?

5 A. Yes.

6 Q. You're not out on the highway?

7 A. No, I'm not.

8 Q. Because you don't want anybody to see you,
 9 right?

10 A. Right.

11 Q. I mean, you're about to commit a robbery,
 12 right?

13 A. Yes.

14 Q. All right. And, now, the reason you wanted
 15 Nocho to go in is because you wanted to know what was
 16 going on in there before you went in, correct?

17 A. Yes.

18 Q. You wanted to know how many people were in
 19 there, correct?

20 A. Yes.

21 Q. How many people were working there, correct?

22 A. Yes.

23 Q. All right. And he comes back, and apparently

1 A. Yeah.

2 Q. Well, they weren't armed? Your coconspirators
 3 weren't armed, were they?

4 A. I was pretty -- I was putting them in danger as
 5 well as myself.

6 Q. The only one you were putting in danger was
 7 Marcus Comer, correct, your brother?

8 A. Everybody.

9 Q. All right. Well, they -- the plan wasn't for
 10 Dekelvin Townsend and Paul Nocho to go into the store
 11 with you, correct?

12 A. It was not.

13 Q. So, when Paul Nocho -- when you confront Paul
 14 Nocho after he comes out and he tells you about there

15 being two clerks, all right, you, according to your
 16 testimony today, decided, wow, this is dangerous, I

17 don't want my brother and these people to get hurt in
 18 this robbery, right?

19 A. That and other thoughts that I had.

20 Q. All right. But one of you thought of public
 21 safety, correct?

22 A. Public -- safety of myself and my brother and
 23 friends.

1 Q. Did you care at all about the clerks?
 2 A. The clerks? That's why I didn't go in there.
 3 Q. All right. So let me see if I understand this,
 4 the reason that you throw in the towel and decide not to
 5 do this is because you were afraid that you, your
 6 brother, your coconspirators, and possibly the clerks
 7 could get hurt. Is that what you're saying today?

8 A. That, and there's a better life than robbing
 9 people. I thought about myself for once.

10 Q. But in any event, okay, you decide that's it,
 11 we're not going to do this robbery?

12 A. Yes, sir.

13 Q. Partially because you didn't want anybody to
 14 get hurt, right?

15 A. Because there's more things out there to do
 16 than rob people. I have children.

17 Q. Well, that's understandable.

18 A. I don't want my kids to see me locked up in
 19 jail from my stupidness that I did.

20 Q. Can you explain that, if you're so concerned
 21 about the safety -- your safety, all right, and the
 22 future of your children and the safety of your
 23 coconspirators and everything, why you in the first

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1 place decided to take a loaded shotgun, put it down your
 2 pants, and walk towards Pockets Liquor store with the
 3 intent to commit an armed robbery?

4 A. Sure. The moment all of us planned it, but in
 5 the same token, all planned it, it was already in my
 6 conscience not to do it. I just got out of jail
 7 February, the last day of January of 2003 -- 2002,
 8 excuse me.

9 Q. So as you're hiding in the bushes and the trees
 10 by Pockets, you have this epiphany, right, I'm going to
 11 change my life, right?

12 A. Yes.

13 Q. And may I assume that when you had this
 14 epiphany, you finally saw the light, all right, that
 15 you're going to change your life. You took that shotgun
 16 out of your pants, and you just threw it into the woods
 17 and said, That's it. I'm never going to rob anybody
 18 else again. That's what you did, right?

19 A. I didn't throw a shotgun into the woods.

20 Q. Oh, I thought you had this epiphany where you
 21 were going to change your life?

22 A. I'm not just going to throw the shotgun into
 23 the woods. I'm going to take the shotgun back to the

1 house and tell my brother to take it back where he got
 2 it from.

3 Q. Well, you had an opportunity to get a deadly
 4 weapon out of your hand, out of circulation, that could
 5 never be used again in a robbery, all right, and you did
 6 not take the opportunity to do that, correct?

7 A. Why should I throw a loaded shotgun in the
 8 woods so somebody else can find it and harm another
 9 person?

10 Q. And use it, right?

11 A. Right.

12 Q. Now, apparently when Paul Nocho meets you in
 13 the grassy area south of Pockets, all right, you're the
 14 one who calls it all off, correct?

15 A. Yes, I did.

16 Q. And did you get any argument at all from
 17 anybody?

18 A. No, I didn't.

19 Q. Everybody followed your directions, according
 20 to you, correct?

21 A. Excuse me. Marcus said, Okay. That's what it
 22 is.

23 Q. And with did Dekelvin Townsend say?

32

1 A. He didn't say nothing. He followed along -- he
 2 followed Marcus across the highway.

3 Q. Now, is it your testimony that all four of you
 4 were there in the grassy area when you called it off?

5 A. Paul Nocho was walking to the car. Myself,
 6 Dekelvin, and Marcus Comer was behind the store in the
 7 woods.

8 Q. All right. Is it your testimony that when you
 9 told Paul Nocho that it was off that the other two were
 10 not around?

11 A. I never told Paul anything. When he told me
 12 there was two clerks in the store, he just kept on
 13 walking.

14 Q. Okay.

15 A. Then I turned to my brother and his friend and
 16 told them what I told them.

17 Q. Well, how far away from Paul Nocho were they
 18 when you told them that?

19 A. Paul was about 20, 30 feet away from me.

20 Q. Walking back towards the getaway car?

21 A. Yep. Yes.

22 Q. Well, if it was all over, why didn't you tell

23 Paul Nocho?

1 A. **Wasn't going to holler his name out.**

2 Q. But you had an opportunity, you were right
3 there with him, right?

4 A. **Sure, I was.**

5 Q. Iginstead, you didn't tell him that -- the
6 rpbbery was off, you let him walk back to the getaway
7 car, correct?

8 A. **Yes, I did. I wasn't going to be in a rush to**
9 **tell him because we didn't go -- none of us did go into**
10 **the store.**

11 Q. But isn't it true that you made the decision
12 right there, all right, right here on State's Exhibit
13 No. 4, all right, where you met Paul Nocho? All right.
14 You had this -- the light went off in your head, and you
15 decided that's it, we're not going to do it?

16 A. **Right.**

17 MR. DEELY: Your Honor, I believe this is --
18 this has been asked and answered.

19 MR. WALTHER: Your Honor, it's foundation for
20 my next question.

21 THE COURT: Overruled, a slightly different
22 question.

23 BY MR. WALTHER:

1 Q. All right. And at that very point, all right,
2 you let Paul Nocho, your coconspirator, walk away,
3 correct?

4 A. **Yes, I did.**

5 MR. DEELY: Your Honor, it's mischaracterizing
6 the testimony.

7 THE WITNESS: Once --

8 THE COURT: You have to wait. Mr. Deely?

9 MR. DEELY: Your Honor, Mr. Walther's
10 mischaracterizing the testimony. The testimony was that
11 Nocho came up, said there were two clerks, and he
12 continued walking toward the car. It was as he -- he
13 said he watched him walk away partway. Then he turned
14 to the other two conspirators and made his statement.
15 That's not what Mr. Walther is saying.

16 THE COURT: Mr. Walther, any response?

17 MR. WALTHER: Your Honor, I'll just move on.

18 THE COURT: Well, I do want you to address his
19 claim that you've misrepresented the testimony.

20 MR. WALTHER: Well, my position is if I did, in
21 fact, misrepresent the testimony, he was there. He
22 could correct me.

23 THE COURT: Well, I'll just say the attorneys

1 shall, of course, use their best efforts to recite the
2 testimony as best that they can remember. It will be my
3 final decision, final analysis, what the testimony
4 actually was. You may continue.

5 MR. WALTHER: Thank you, Your Honor.
6 BY MR. WALTHER:

7 Q. Now, at any time when you were walking towards
8 Pockets with the intent to commit the crime of robbery
9 in the first degree, did you have the gun out?

10 A. **No, I did not.**

11 Q. I'm sorry?

12 A. **No, I did not.**

13 Q. You always kept it down in your pants?

14 A. **Yes, I did.**

15 Q. You never took it out?

16 A. **No, I didn't.**

17 Q. Even before you decided not to do it?

18 A. **Never took it out.**

19 Q. Now, it's your testimony that once you called
20 it all off, Dekelvin Townsend and Marcus Comer crossed
21 over the southbound lanes and the northbound lanes and
22 then walked towards Llangollen Boulevard, correct?

23 A. **Yes.**

1 Q. Now, how long after that did the police respond
2 and stop you?

3 A. **Well, as I proceed walking, I'd said about four**
4 **minutes.**

5 Q. About four minutes?

6 A. **Yeah.**

7 Q. All right.

8 A. **I was walking slow.**

9 Q. All right. So it took you four minutes to walk
10 roughly from this area right here, which Slover
11 testified was about 150 feet, to the corner?

12 A. **Yes.**

13 Q. All right. That's about right?

14 A. **After I watched my brothers cross the street, I**
15 **didn't proceed walking -- once they got across the**
16 **street, that's when I started walking. They had to wait**
17 **for traffic to cross.**

18 Q. Well, you're standing here with a loaded
19 shotgun in your pants and a ski mask with the eyes cut
20 out?

21 A. **Nobody could see the eyes. It was rolled up**
22 **like a regular hat.**

23 Q. Okay. And you took the time to watch your

1 brother and Dekelvin Townsend cross over?

2 A. Yes, I did.

3 Q. And is that because you were concerned about

4 them getting hit by a car?

5 A. It wasn't that. I wanted to wait until they

6 crossed the street.

7 Q. Because you were concerned about their --

8 A. I wanted to wait until they crossed the street.

9 Q. Why?

10 A. And then I started walking.

11 Q. Why did you want to wait until they crossed the

12 street?

13 A. Because that was my decision that I wanted to

14 make.

15 Q. Why?

16 A. That was my decision that I wanted to make.

17 Q. Why?

18 A. That was my decision that I wanted to make.

19 Q. No particular reason, then, you just made that

20 decision?

21 A. No, I just watched them walk across the street

22 and then proceeded to my destination.

23 Q. Were you the least bit concerned that you'd be

1 A. Yes, I did hear him say that.

2 Q. And is it your position that he was wrong?

3 A. Yes, he was.

4 Q. Okay. You're not suggesting that he was lying

5 about that point, are you?

6 A. He was telling false statements.

7 Q. Then you were suggesting that he was lying,

8 right?

9 A. Yes.

10 Q. He wasn't simply wrong, he's a liar. Is that

11 what you're saying?

12 MR. DEELY: Objection, Your Honor.

13 THE COURT: On what grounds are you objecting?

14 MR. DEELY: It's attempting to characterize

15 what the witness is saying. The witness said what he

16 said. He said the statement was wrong. Now he's going

17 into characterizations of that statement. He doesn't

18 know why Corporal Slover said what he said. He just

19 knows what was said, and he disagrees with it.

20 THE COURT: Mr. Walther?

21 MR. WALTHER: No, he said he was lying, Your

22 Honor.

23 THE COURT: I will overrule the objection, and

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1 walking southbound on a busy highway with a shotgun in

2 your pants?

3 A. Nobody could see the shotgun.

4 Q. Were you concerned at all that the police might

5 drive by and see you walking on the street without a

6 light, stop you, and find you with a shotgun?

7 A. Pedestrians walk that way all the time.

8 There's a housing department over there.

9 Q. So the answer is you weren't concerned about

10 that, correct?

11 A. Yeah, I was concerned. I was on my way back to

12 the car.

13 Q. It's your testimony it took you about four

14 minutes to walk about 100 feet?

15 A. After I watched my brothers cross the street --

16 before they crossed, I watched the cars before, they

17 wouldn't get hit before that.

18 Q. And that's when Police Officer Slover stopped

19 you, correct?

20 A. Yes, he did.

21 Q. Now, you heard him testify that at the time --

22 right before he stopped you, you were walking back

23 towards Pockets, correct?

40

1 I'll give the way the responses are phrased such weight

2 as I think appropriate.

3 MR. WALTHER: Thank you, Your Honor.

4 BY MR. WALTHER:

5 Q. Would you agree with me, Mr. Harris, that of

6 everyone who has testified in this courtroom on the

7 issue of whether or not you were walking away from

8 Pockets or towards Pockets you have the most to lose as

9 a result of that?

10 A. I was walking away.

11 Q. That's not my question. My question was, with

12 regard to everyone who has testified on this issue, that

13 you, more than anyone else, have more to lose on the

14 issue of whether or not you were walking towards Pockets

15 or away from Pockets?

16 A. Yes, I do have a lot to lose. I was walking

17 away from the area back to the car.

18 Q. Now, when the police stopped you, all right,

19 you had already made this decision to end -- at least

20 according to you, to end the robbery, that's it, you're

21 not going to do it, correct?

22 A. Yes.

23 Q. Isn't it true that you knew that there were two

	41		43
1	police cars right there?	1	Q. When is the first time you saw the police?
2	A. Well, when I was walking towards my direction	2	A. When I got to the intersection.
3	of the car, police car crept up behind me. And once it	3	Q. Is it the area where the two police cars are
4	got close to me and I seen the lights on the ground, I	4	marked on State's Exhibit 4?
5	turned around.	5	A. Yes.
6	Q. Okay.	6	Q. That's the first time you saw the police?
7	A. And once I turned around, another cop car came	7	A. Yes.
8	up, asked me where I was going.	8	Q. And that was after you were headed back toward
9	Q. Okay. And you know at that point you have a	9	the car?
10	problem, right?	10	A. Yes.
11	A. I was sure I did.	11	Q. Now, the State said you have the most to lose
12	Q. Because you have something in your pants,	12	in this -- in this case. That's kind of self-evident,
13	correct?	13	isn't it?
14	A. Sure, I did.	14	A. Yes.
15	Q. The shotgun, correct?	15	Q. You're the one on trial?
16	A. Yes, I did.	16	A. Yes.
17	Q. And knowing that you had already formulated the	17	Q. So whatever the statements are, you have the
18	intent to commit robbery in the first degree and having	18	most to lose. Isn't that correct?
19	a shotgun in your pants, all right, you didn't say to	19	A. Yes
20	the police officer, Here, take the gun, did you?	20	Q. You've also taken an oath today, haven't you?
21	A. No, I did not.	21	A. Yes..
22	Q. Now, it's your testimony here today that you	22	Q. And your oath is to tell the truth?
23	told Marcus Comer and Dekelvin Townsend that it was off,	23	A. Yes.
	42		44
1	correct?	1	Q. In the prior robberies which you admitted that
2	A. Yes, I did.	2	you had been convicted of prior -- previously?
3	Q. May I assume they're out there waiting to	3	A. Yes.
4	testify to corroborate your testimony?	4	Q. Did you use any deadly weapons? Did you use
5	A. Marcus Comer?	5	any guns?
6	Q. Yes.	6	A. No, I did not.
7	A. Yes.	7	Q. Have you ever used a gun before?
8	Q. He's out there, he's going to testify in this	8	A. No, I did not. No, I haven't.
9	case?	9	MR. DEELY: No further questions, Your Honor.
10	A. If he's out there.	10	THE COURT: Mr. Walther?
11	Q. Okay. I'll wait.	11	CROSS-EXAMINATION
12	MR. WALTER: Nothing further.	12	BY MR. WALTER:
13	THE COURT: Mr. Deely, redirect examination?	13	Q. You were convicted on two separate occasions of
14	REDIRECT EXAMINATION	14	robbery in the first degree, correct?
15	BY MR. DEELY:	15	A. Yes, I have. Yes, I was.
16	Q. Mr. Harris?	16	Q. And -- and that was on one indictment, correct?
17	A. Yes.	17	A. Yes.
18	Q. When you decided not to commit the robbery and	18	Q. I'm going to show you something. I'm going to
19	to go back to the car, did you know the police had been	19	ask you if it refreshes your memory. In 1999 you pled
20	called?	20	guilty to robbery in the first degree, and that was part
21	A. No, I didn't.	21	of an indictment where there were a number of other
22	Q. Had you seen any police at that point?	22	charges, correct?
23	A. No, I had not.	23	A. Yes, it was.

	45		47
1 Q. Now, you see where it says robbery in the first 2 degree?		1 Q. All right. So at some point you had to stand 2 up in a court like this, all right, and admit that you 3 committed the crime of robbery in the first degree, 4 right?	
3 A. Yes.		5 A. In the prior robberies that I had?	
4 Q. Do you see pled guilty?		6 Q. Yeah.	
5 A. Yes.		7 A. No, I didn't. Oh, yes. I did. Yes, I did.	
6 Q. PG? Do you see all those other charges?		8 Q. So you pled guilty to two robberies in an 9 indictment where there's two weapons counts, and a Judge 10 read to you the robbery in the first degree, correct?	
7 A. Yes.		11 A. Yes, he did.	
8 Q. All right. One of those other charges is 9 possession of a deadly weapon during the commission of a 10 felony, isn't it?		12 Q. And isn't it true when he read to you the 13 statute of robbery in the first degree, he said you 14 displayed what appeared to be a deadly weapon?	
11 A. Yes.		15 A. No, I don't remember --	
12 Q. Is it your testimony today under oath, to tell 13 the truth, that during that robbery in 1999 you didn't 14 have a weapon on you?		16 Q. Well, did you hurt somebody in those robberies?	
15 A. I did not.		17 A. No, I did not.	
16 Q. Did a codefendant have a weapon?		18 Q. Well, okay.	
17 A. I didn't have no codefendant in there.		19 MR. WALTHER: Nothing further.	
18 Q. Now, in 2001 you pled guilty to yet another 19 robbery in the first degree, right?		20 THE COURT: Mr. Deely, anything further?	
20 A. Yes.		21 MR. DEELY: No, the only thing I would say is 22 that the prior offenses were charged.	
21 Q. And you recognize that charge of robbery first 22 degree, you pled guilty, right, on May 10th of 2001?		23 MR. WALTHER: Your Honor, excuse me. Is this	
23 A. Yes.	46		48
1 Q. And isn't it true that it's all part of one 2 indictment?		1 argument or is this a question?	
3 A. Yes.		2 MR. DEELY: I have a question. I have a 3 question.	
4 Q. And isn't it true that one of the counts of 5 that indictment was possession of a deadly weapon during 6 the commission of a felony, correct? Right under 7 Robbery I.		4 THE COURT: All right. Then ask the question.	
8 A. Yes.		5 REDIRECT EXAMINATION	
9 Q. And may I assume that your testimony here today 10 is consistent with your prior testimony; even though you 11 were charged with that, you didn't have in your 12 possession a deadly weapon?		6 BY MR. DEELY:	
13 A. I took a plea because I was scared.		7 Q. In your prior robberies that the prosecutor 8 showed you the record of, the charges were carrying a 9 concealed deadly weapon. Is that correct?	
14 Q. That's not what I asked you.		10 A. Yes, it was.	
15 A. I never had a weapon.		11 Q. It didn't say a gun, did it?	
16 Q. It's your testimony today that you did not have 17 a weapon?		12 A. No, it did not.	
18 A. Yes.		13 Q. You've never used a gun in any prior robbery, 14 have you?	
19 Q. You're sure about that?		15 A. No, I haven't.	
20 A. Yes, I am.		16 MR. DEELY: Nothing further, Your Honor.	
21 Q. You don't want to recant that statement at all?		17 THE COURT: Mr. Walther, anything further?	
22 A. I never had a weapon in any of those robberies,		18 MR. WALTHER: No, Your Honor.	
23 except the person in that case said that I had one.		19 THE COURT: Then Mr. Harris may step down.	
		20 Will there be any further evidence from the defendant?	
		21 MR. DEELY: Nothing further, Your Honor.	
		22 THE COURT: Mr. Deely rests.	
		23 Will there be any rebuttal evidence from the	

1 Q. I show you State's Exhibit No. 1. That's a
2 copy of the 911 call from Mr. Taylor?

3 A. Yes.

4 Q. Did you at some point in this investigation
5 talk to Mr. Taylor?

6 A. Yes, I did.

7 Q. Is he an African-American gentleman?

8 A. He is.

9 Q. Have attempts been made by you to locate him
10 for purposes of testimony here today?

11 A. Yes. In fact, I did find him at some point
12 several months ago. He was living in a vehicle.
13 But since then, I don't know his whereabouts.

14 MR. DEELY: Your Honor, we'll stipulate the
15 tape is authentic, and we've agreed it's admissible
16 under at least a couple of the hearsay exceptions.
17 The defense will stipulate to that.

18 THE COURT: Without objection, the tape will
19 come into evidence as the State's first exhibit.

20 MR. WALTHER: With the Court's permission,
21 I'd ask that Detective Bramble be able to play the
22 tape.

23 THE COURT: For my information, the

1 MR. WALTHER: I have nothing further of this
2 witness.

3 THE COURT: Mr. Deely, you may
4 cross-examine.

5 MR. DEELY: I have no questions of this
6 witness.

7 THE COURT: Detective Bramble, you may step
8 down.

9 MR. WALTHER: The State calls Officer Scott
10 Slover.

11 OFFICER SCOTT SLOVER, having been called on
12 the part and behalf of the State as a witness,
13 being first duly sworn under oath, testified as
14 follows:

15 DIRECT EXAMINATION

16 BY MR. WALTHER:

17 Q. Officer Slover, by whom are you employed?

18 A. Delaware State Police.

19 Q. As a trooper?

20 A. Yes.

21 Q. And how long have you been a trooper?

22 A. Going on six years now.

23 Q. Were you a trooper for the Delaware State

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1 approximate length of the tape?

2 MR. WALTHER: Ten minutes, at most.

3 THE WITNESS: The tape needs to be rewound.

4 MR. WALTHER: Okay.

5 (Audiotape played for the Court.)

6 MR. WALTHER: Your Honor, the purpose of it
7 was for Your Honor to hear the 911 call. There is
8 some discussion back and forth between the
9 dispatcher and a number of police officers. If
10 Your Honor would like to listen to that, we can,
11 but --

12 THE COURT: I'll leave it to you,
13 Mr. Walther.

14 MR. WALTHER: Thank you, Your Honor.

15 MR. DEELY: We don't object to it being cut
16 off there, because it becomes essentially radio
17 gobbledegook that only the officers, I believe,
18 would understand.

19 MR. WALTHER: That's still part of the
20 record, for purpose of that exhibit, because it was
21 part of the suppression hearing.

22 THE COURT: The State elects not to play it,
23 so let's move on with the evidence.

1 Police back on May 7, 2003?

2 A. Yes.

3 Q. On that date, did you have occasion to
4 respond to the area of 325 South DuPont Highway?

5 A. Yes.

6 Q. And do you recall approximately what time
7 you were dispatched?

8 A. Approximately 2338 hours, 11:38 at night.

9 Q. And how long did it take you to get to the
10 area of 325 South DuPont Highway?

11 A. Approximately five minutes.

12 Q. When you were dispatched to that location,
13 what information, if any, did you have in regard to
14 why you were going to that location?

15 A. I was responding there because 325 South
16 DuPont Highway is a residence, and the occupants of
17 that residence called 911 because they reported
18 that there was a vehicle parked in their driveway
19 and subjects had exited the vehicle and placed
20 masks over their face.

21 MR. DEELY: Your Honor, the officer is now
22 engaging in hearsay. We've heard the tape. If he
23 can just say why he was dispatched, then what he

1 did.

2 THE COURT: That's, in essence, what he's
3 doing.

4 Mr. Walther.

5 MR. WALTHER: It's not hearsay, Your Honor,
6 because it's not offered for the truth or veracity,
7 but to tell you why he went to that location, to
8 give Your Honor some flavor.

9 THE COURT: Objection overruled. I don't
10 think it's hearsay.

11 A. The subjects had placed masks on their face.
12 One subject had put something that appeared to be a
13 pipe inside their clothing and walked northbound
14 toward Pockets.

15 THE COURT: Is that something that you
16 observed or were told?

17 THE WITNESS: That's something I was told by
18 the dispatchers.

19 BY MR. WALTHER:

20 Q. With that information, did you respond to
21 the area of 325 South DuPont Highway?

22 A. Yes, sir.

23 Q. When you came to that location, can you

1 A. Yes.

2 Q. Did you see other police vehicles there?
3 A. Yes.

4 Q. Were these also marked police vehicles with
5 lights?

6 A. Yes.

7 Q. Did you see whether or not they had their
8 lights on the top of their car on?

9 A. At the same time I activated my lights,
10 there was another trooper directly in front of me,

11 Q. And what officer was that?

12 A. Trooper McLaughlin, Delaware State Police.

13 Q. Was there a time when you saw Officer
14 Fletcher respond?

15 A. Yes.

16 Q. Did he respond to the police vehicle with
17 the lights on?

18 A. I don't recall when he had his lights on,
19 but yes, he did respond in a police vehicle.

20 Q. Do you recall at some point whether or not
21 you saw the lights in his car on?

22 A. Yes.

23 Q. Was that after you apprehended somebody on

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1 describe the police vehicle that you were driving?
2 A. I was driving a fully marked Crown Victoria,
3 lights on top, Delaware State Police emblems on the
4 side.

5 Q. When you're saying lights on top, you're
6 talking about 360's?

7 A. Yes, bar on top, red and blue lights.

1 South DuPont Highway?

2 A. Yes.

3 Q. Can you tell the Court, please, what you did
4 as you approached 325 South DuPont?

5 A. Yes. As I was coming on 13 southbound, as I
6 explained a moment ago, Trooper McLaughlin was
7 directly in front of me. As we approached the red
8 light at Llangollen Boulevard, we were just north
9 of the red light itself, again, 13 southbound, I
10 noticed Trooper McLaughlin was in the right lane.
11 Like I said, I was directly behind him.

12 He came to a stop, and I noticed a subject
13 walking northbound on the right shoulder of 13
14 southbound, so walking against traffic. He was
15 only about --

16 Q. Go ahead.

17 A. He was only about a foot to the right of the
18 solid right line which separates the right lane
19 from the shoulder, and he was walking northbound
20 towards Pockets.

21 Q. So he was walking northbound on the shoulder
22 of the southbound lane?

23 A. Correct.

1 Q. Can you describe the shoulder?
 2 A. It's a low asphalt shoulder approximately
 3 12-foot wide.

4 Q. And what did you do?
 5 A. As I said, Trooper McLaughlin stopped in the
 6 right lane, and that's when I noticed the subject
 7 standing or walking northbound on the shoulder. I
 8 pulled my vehicle to the right of Trooper
 9 McLaughlin's, so I was actually sitting in the
 10 right shoulder. And at that time, I had my lights
 11 on and whatnot.

12 Q. So right before you stopped him, he was
 13 walking towards Pockets Liquors?

14 A. Correct.

15 Q. What did you do as you stopped him?

16 A. I stopped him. As I said, Trooper
 17 McLaughlin's car was in the right lane. Mine was
 18 on the right shoulder.

19 The subject was wearing blue coveralls and a
 20 dark knit cap on his head. And I exited the
 21 vehicle and asked him to remove his hands from his
 22 pockets because he had his hands in his pockets at
 23 the time. And I asked him to turn around because

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1 at this time, he was facing me. And at this time,
 2 I was going to complete a patdown on the subject.

3 Q. For what purpose?

4 A. Because while I was traveling there, I'm
 5 taking all the Recom from the dispatch -- what
 6 Recom had stated on the radio as far as the subject
 7 exited the vehicle, placed a mask over their face,
 8 put what appeared to be a pipe inside their
 9 clothing, and were walking toward Pockets, so I
 10 took that into consideration.

11 I saw this subject on the shoulder. He had
 12 a knit cap on. It wasn't pulled over his face, but
 13 he had a knit cap on his head, he had dark clothing
 14 on. So I exited the vehicle and wanted to pat him
 15 down, because the large pipe could have possibly
 16 been a weapon, could have been, you know, a
 17 shotgun.

18 Q. Okay. Did you search him?

19 A. As I went to place my hands -- I didn't
 20 actually put my hands on him yet. I had my left
 21 hand toward his back and my right hand was out like
 22 this, and I stated, Do you have any weapons on you?
 23 which I always state to anybody I'm going to pat

1 down, before I even touched him. He said he had a
 2 shotgun on him.
 3 Q. Did you search him then?
 4 A. Yes.
 5 Q. What did you find?
 6 A. Found a 12-gauge shotgun inside his blue
 7 coveralls that he was wearing.
 8 Q. Did you remove it?
 9 A. Yes, I did.
 10 Q. Did you check to see if it was loaded?
 11 A. Yes, it was. There was one round of Federal
 12 7-1/2-shot shotgun shell in the chamber.
 13 Q. Was the safety off?
 14 A. The safety was off, and there was also one
 15 in the magazine underneath, same round.
 16 MR. WALTHER: Your Honor, may I have this
 17 marked for identification, please?
 18 THE COURT: Yes.
 19 MR. WALTHER: Your Honor, by the way, I
 20 brought this in and had Detective Bramble make sure
 21 it was not loaded and it's not operable.
 22 MR. DEELY: Without objection, Your Honor.
 23 MR. WALTHER: I'll ask that it be marked as

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1 an exhibit.

2 THE COURT: Mark it as the next State's
 3 Exhibit, please.

4 THE CLERK: State's Exhibit 2, Your Honor.
 5 (State's Exhibit No. 2 was admitted into
 6 evidence.)

7 BY MR. WALTHER:

8 Q. Officer Slover, I show you what has been
 9 marked as State's Exhibit No. 2.

10 Is this the shotgun that you removed from
 11 the man that you stopped on May 7, 2003 by Pockets
 12 Liquor Store?

13 A. Yes, it is.

14 Q. Does it appear to be in essentially the same
 15 condition as it was when you stopped that
 16 individual?

17 A. Yes, it was.

18 Q. Is that individual that you stopped in the
 19 courtroom today?

20 A. Yes, he is.

21 Q. Would you identify him, please?

22 A. Sure. Mr. Harris, seated to the right of
 23 Mr. Deely.

1 The testimony is this: That when Officer
 2 Slover pulled up within 20 feet of him, the defendant
 3 was walking towards Officer Slover, which is in a
 4 northbound direction towards Pockets, and we're not
 5 talking about it being two or three blocks away, Your
 6 Honor. I believe the testimony was that it was 140 feet
 7 from the top of the intersection there at Llangollen
 8 Boulevard to Pockets. And, you know, we're only talking
 9 about less than 40 yards from that area.

10 THE COURT: What did Corporal Slover testify to
 11 in terms of, if he testified this way, the number of
 12 steps that the defendant was observed walking
 13 northbound, north -- north on the southbound shoulder?

14 MR. WALTHER: I don't know --

15 THE COURT: I don't know that he did. I'm
 16 trying to get a sense --

17 MR. WALTHER: He qualified it. I'm sorry, Your
 18 Honor.

19 THE COURT: Is it possible, from a fair
 20 reading, his testimony was, well, maybe the defendant
 21 was walking southbound along with traffic, but then
 22 turned around and briefly started to walk -- see, what
 23 I'm getting at? I'm just trying to see if Corporal

53 1 under Rule 609, in so far as credibility is concerned.

2 The State's not introduced any 404(b)-type evidence.

3 MR. WALTHER: Absolutely, Your Honor. And it
 4 was for that purpose, because it's a crime of
 5 dishonesty, robbery in the first degree.

6 THE COURT: Now, if I may interrupt again then?
 7 Wouldn't it also be possible, and maybe I should be
 8 asking this to Mr. Deely later, but wouldn't it also be
 9 possible that the defendant was walking away from
 10 Pockets, but still hadn't renounced or abandoned the
 11 crime anyway?

12 MR. WALTHER: Absolutely, Your Honor. And if
 13 you --

14 THE COURT: So I don't think the direction of
 15 the walker, the defendant, is absolutely determined
 16 necessarily one way or the other.

17 MR. WALTHER: But it's a significant factor.
 18 All right? But the other thing, too, is it doesn't
 19 really make sense if, as I've described it, this
 20 epiphany that the defendant has right after Paul Nocho
 21 tells him who's inside that he wouldn't say to Paul
 22 Nocho, Hey, you know, that's it. But what does he do?
 23 All right. He just has him go back to the car and wait

54 1 Slover's testimony indicates just how long and how
 2 established the northbound route was.

3 MR. WALTHER: Your Honor, we did not get into
 4 that much detail. However, his testimony I -- in which
 5 he was asked a number of times was that he was
 6 walking -- his testimony was not that he saw him, he
 7 stopped, and then he turned around. In fact, the only
 8 testimony with regard to any turning around is when the
 9 officer for public -- for his own safety instructed him
 10 to turn around.

11 THE COURT: Yes, I believe the officer
 12 testified to that about three times, at least.

13 MR. WALTHER: At least. And, you know, I think
 14 Your Honor knows exactly where the case turns on. The
 15 case turns on whether or not he was walking towards
 16 Pockets or that he renunciated and was walking away from
 17 Pockets. And it all -- it will come down to who does
 18 Your Honor believe. The State suggests that given the
 19 circumstances of the defendant's background, given the
 20 fact that he has so much to gain in his testimony,
 21 and --

22 THE COURT: Now, the only -- the only way in
 23 which I'm considering the prior robbery convictions is

56 1 there, placing him in jeopardy as a -- as the driver of
 2 a getaway car. It just doesn't make sense he would do
 3 that, especially with his background.

4 The issue comes down to, you know, whether or
 5 not there was a renunciation that is a voluntary and
 6 complete renunciation as that term is used. And
 7 Subsection C(1) of Section 541 says when it's not a
 8 voluntary and complete renunciation, it neither in whole
 9 nor in part, if there is a belief that circumstances
 10 exist which increase the probability of detection or
 11 apprehension of the accused or another participant. The
 12 State suggests that given all the circumstances and
 13 given the defendant's uncorroborated testimony, even
 14 uncorroborated by his own brother and even
 15 uncorroborated by one of his own coconspirators, he says
 16 it was a complete and voluntary renunciation.

17 The bottom line, Your Honor, is reason and
 18 common sense dictates, all right, that he sees the
 19 police coming. That when he sees the police coming, he
 20 realizes that he's caught. He did nothing up to that
 21 point. If he really was fed up with the life that he
 22 had, he could have tossed the gun. He could have told
 23 the police, Hey, all right. Here's the gun. Take it.

	13		15
1	THE COURT: Walther, you may cross-examine.	1	A. Yes.
2	MR. WALTHER: Thank you, Your Honor.	2	Q. Isn't it fair you were calling the shots that
3	CROSS-EXAMINATION	3	evening?
4	BY MR. WALTHER:	4	A. Everybody agreed. I wasn't calling the shots.
5	Q. It is a fact that when you and Marcus Comer,	5	Q. When you told them what their roles were, they
6	and Marcus Comer being your brother, before the robbery,	6	agreed, correct?
7	that you had a discussion with your coconspirators that	7	A. Yes.
8	you were going to rob Pockets Liquors, correct?	8	Q. Now, before you left, did you make any attempt
9	A. Yes.	9	to get any type of a disguise?
10	Q. In fact, it was your idea; you're the one with	10	A. Yes, we did.
11	the expertise, correct?	11	Q. You said yes, we did or yes, you did?
12	A. No, it was everybody's idea. Wasn't	12	A. Yes, we did.
13	particularly my idea.	13	Q. All right. So everybody did. Whose idea was
14	Q. Well, everyone agreed, correct?	14	it to get a disguise?
15	A. Yes.	15	A. It wasn't nobody -- wasn't no particular
16	Q. All right. And are you saying that it was	16	person's idea. Everybody assumed to get a disguise.
17	someone else's idea, not your idea, to commit a robbery	17	Q. Are you just saying that it seemed like a
18	that night?	18	reasonable thing to do, if you're going to commit a
19	A. Not saying that it was -- repeat the question	19	robbery, that you have some type of disguise?
20	again.	20	A. Yes.
21	Q. Was it your idea to commit the robbery?	21	Q. And because you didn't want to be apprehended,
22	A. No, it was not.	22	correct?
23	Q. Whose idea was it?	23	A. Yes.
	14		16
1	A. I'm not sure whose idea was it, but I blended	1	Q. And if somebody could see you with your face
2	in with the conversation.	2	exposed, you could be identified and convicted of
3	Q. All right. So discussions took place before	3	robbery again, right?
4	you even left the house that you were going to do a	4	A. Yes.
5	robbery with these other individuals, correct?	5	Q. You knew that before you even left the house,
6	A. Yes.	6	right?
7	Q. May I assume, then, you had a discussion about	7	A. Yes.
8	how the robbery was going to occur, right?	8	Q. So you decided to get a knit cap, correct?
9	A. Yes.	9	A. Yes.
10	Q. In fact, isn't it true that you decided who was	10	Q. And you decided to cut the holes out, correct?
11	going to do what?	11	A. Yes, I did.
12	A. Yes.	12	Q. And you already decided that you were going to
13	Q. In fact, you decided that Comer was going to be	13	use a weapon during that robbery, correct?
14	the driver of the getaway car, right?	14	A. Once -- once I was told there was going to be
15	A. Comer?	15	one, yes.
16	Q. Excuse me. Nocho?	16	Q. Once you were told there was going to be one?
17	A. Yes.	17	A. Yes.
18	Q. Right. And you decided that you and Marcus	18	Q. I thought you were the guy telling everybody
19	Comer would go in and actually commit the robbery,	19	what they were going to do?
20	correct?	20	A. Yes, but somebody presented a weapon to me. I
21	A. Yes.	21	didn't know that they had a weapon.
22	Q. And you decided that Dekelvin Townsend would be	22	Q. Oh. All right. So somebody gave you a weapon?
23	the lookout, correct?	23	A. Yes.

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STATEMENT OF CHARGES

Ryant N. Harris was charged by indictment and tried for Attempted Robbery First Degree, Possession of a Firearm During the Commission of a Felony, Conspiracy Second Degree. The following charges were Nolle Prossed prior to the commencement of the trial: Attempted Robbery First Degree, Possession of a Firearm During the Commission of a Felony, Wearing a Disguise During the Commission of a Felony, Carrying a Concealed Deadly Weapon, and Possession of a Firearm by a Person Prohibited. These charges were dropped in exchange for Harris' waiver of a jury trial.

The Attempted Robbery First Degree charge alleged that Mr. Harris attempted to commit a Robbery against Sunilkumar Patel an employee of Pockets Liquor Store. Mr. Harris and his co-defendants planned the robbery at a co-defendants house and they then traveled to the vicinity of Pockets Liquor Store. They then place ski masks over their heads and took a shotgun which they intended to use in the Robbery. These acts in there entirety, constituted a substantial step in a course of conduct planned to culminate in Robbery First Degree. The Possession of a Firearm During the Commission of a Felony charge alleged that Mr. Harris and his co-defendants did possess a firearm during the

commission of Attempted Robbery First Degree. The Conspiracy Second Degree alleged that Mr. Harris and his co-defendants on or about the 7th of May, 2003, when intending to commit Robbery First Degree or a related felony, did agree with one another to engage in a course of conduct constituting Robbery First Degree and further that an overt act was committed in pursuance of said Conspiracy.

NATURE OF DEFENSE AT TRIAL

The defense at trial was the defense of renunciation. The argument was that Mr. Harris' actions manifested a voluntary and complete renunciation of the criminal purpose under 11 Del. C. § 541 (a) (b) .

SUMMARY OF THE EVIDENCE

Prior to trial a suppression hearing seeking to exclude the shotgun was held. The Court ruled that the State Trooper that frisked Mr. Harris had an articulable reasonable suspicion for the weapons search.

On May 7, 2003, Delaware State Troopers arrested Mr. Harris and two of the three co-defendants in the vicinity of Pockets Liquor Store. The fourth co-defendant was arrested sometime later as a result of information obtained during the investigation. A New Castle Grand Jury indicted all four individuals. All of the co-defendants except Mr. Harris accepted the plea offers made by the State. Mr. Harris rejected the State's offer. Mr. Harris waived his right to a jury trial and the case against Mr. Harris proceeded to trial in the Superior Court before the Honorable Richard R. Cooch on February 19, 2004. Mr. Harris was convicted of the three counts for which he was tried. Mr. Harris received a sentence of eleven (11) years at Level 5 suspended after ten (10) years for probation. After a timely Notice of Appeal was filed, briefing was scheduled and this is the Appellant's brief on appeal.

The trial began on February 19, 2004. Mr. Harris waived his right to a jury trial. (A-12,13). In exchange for the

waiver the State agreed to drop counts III, IV and V. (A-12). The prosecutor gave his opening statement to the Court. (A-14-16). Defense Counsel then gave his opening statement. (A-16-17). He claimed that the evidence would show that Mr. Harris and the three co-defendants were at Mr. Harris' house. (A-16). While there they decided to commit a robbery. (A-16). They got into a co-defendant's car and drove 325 DuPont. (A-16). They parked the car at that address. (A-16). They got out of the car and Mr. Harris placed the shotgun inside his coveralls. (A-16). He and the other co-defendants put their masks on and walked across the street to the wooded vacant lot towards the liquor store. (A-16). Mr. Harris never in fact went into the store and that when the police arrived Mr. Harris was walking away from the liquor store. (A-16). When stopped he was about fifty feet from the car. (A-16). That at least three of the co-defendants were walking away from the scene prior to the arrival of the police with out knowing that a 911 call was made. (A-16). Therefore, since they were leaving the scene prior to the arrival of the police and before they had knowledge that the police were called, they had in fact renounced their plan to rob Pockets Liquor Store. (A-16,17). The Defense stipulated that Pockets was a liquor

store. (A-17). That it was open and a cash business. (A-17). The Defense further stipulated that the store was open and that there were people on duty in the store. (A-17).

The State called Detective Bramble as its first witness. (A-17). He authenticated the 911 tape. (A-17). The Defense stipulated to the authenticity of the tape and agreed to the tape being played. (A-18).

The State then called Officer Slover of the Delaware State Police. (A-18). He testified that he responded to the area of 325 DuPont Highway. (A-18). He stated that upon being dispatched he was informed that the subjects had put on masks and one put what appeared to be a pipe in his pants. (A-19). Upon arriving in the area he noticed a Harris just north of the intersection of Route 13 and Llangollen on the right shoulder. (A-19). Harris was walking northbound towards Pockets. (A-19). When the officer stopped Harris he was wearing coveralls and a dark knit cap. (A-20). The officer asked him to remove his hands from his pockets and turn around. (A-20). Prior to patting Harris down the officer asked if he had any weapons to which Harris responded that he had a shotgun. (A-20). As the officer had Harris stopped he saw a vehicle attempting to leave 325 South DuPont Highway and he asked Corporal

Fletcher to stop the car. (A-21). The area where Harris was stopped was a dark area illuminated only by the traffic light. (A-24). It was raining. (A-24). Harris was stopped approximately 150 to 200 feet from Pockets. (A-23,25).

The State next called Officer Fletcher. (A-31). Officer Fletcher stopped the car and driver, Paul Nocho, attempting to leave 325 South DuPont Highway. (A-31). The officer also testified that he heard a radio call that a county officer stopped another individual across Route 13 from where Harris was stopped. (A-32).

The State next called Paul Nocho. (A-33). Nocho confirmed that Harris and the three co-defendants were together at the house. (A-33). He confirmed that they planned the robbery while at the house and then left in the car with disguises and the shotgun. (A-34). He confirmed that he drove the four of them to the house near Pockets. (A-34,35). He stated that his role was to go into the store to case it and then be the get away driver. (A-35). He went into the store and on his way back to the car he talked with Harris and told him there were people in the store. (A-35,36). He did not see the other two co-defendants while returning to the car. (A-36) He stated that as part of his plea agreement he would testify at the co-defendants'

trials. (A-36,37). On cross he testified that the location where Harris was stopped was farther away from Pockets than the point where he talked to Harris after casing the store. (A-38). He further stated that Harris would have to walk away from Pockets to get to the point where he was stopped by the police. (A-38).

The State rested. (A-41).

The defense then called Mr. Harris. (A-41). Harris testified that as Nocho walked back to the car, Harris decided that the robbery was a mistake. (A-42). He told the other two co-defendants, Comer and Townsend, "It's not going to happen." (A-42). He told them to walk home and meet him at the house. (A-42). Then Harris waited until the two co-defendants crossed Route 13, and then he began to walk back to the car. (A-43). Harris stated that when the police stopped him he was getting ready to go around the corner back to the car. (A-43). He further stated that Corporal Slover was wrong when he stated that Harris was walking towards Pockets when he stopped Harris. (A-50). He said he turned around from the direction he was walking when he noticed the car behind him. (A-50,51). The rest of Harris' testimony was in general agreement with the facts previously outlined.

The closing arguments restated the prosecution arguing that Harris was walking toward Pockets and that the person mentioned as coming back on the 911 tape could easily have been one of the co-defendants. The Court said it was only considering Harris' prior record as to credibility. (A-54). The Court asked why the other co-defendants were not in the area and the State argued that they left upon seeing the police. (A-55). The State argues that the person mentioned in the 911 call could be a co-defendant. (A-55) The Court asked why was Harris farther away from Pockets when stopped by the police then when he talked to Nocho. (A-55). The State responded that he need to meet with the other two co-defendants to complete the robbery. (A-55). The defense argued that Harris was walking away from Pockets before ever seeing the police and that the person mentioned on the 911 tape as coming back could only be Harris. (A-56). The defense argued that the renunciation occurred when Harris said he could not go through with the robbery and told the co-defendants to go home. (A-56). The defense then discussed the renunciation. (A-56,57). The Court then asked what analysis applied to the possession of a deadly weapon count. (A-57). The defense responded that the firearm charge was directly linked to the felony and if renunciation

was found the charge would fail. (A-57).

The Court then made its finding. The Court began by reciting some of the facts and discussing the defense of renunciation. (A-58-60). The Court further found that based on its assessment of the credibility of the witnesses and the evidence presented the defense of renunciation was not established by a preponderance of the evidence. (A-61). The Court further found that irrespective of the defense raised it found beyond a reasonable doubt that all of the charged offenses were committed. (A-61). A presentence investigation was ordered. (A-61).

SIGNIFICANT APPLICATIONS AND RULINGS

The only unfavorable ruling impacting the defense was the Court's ruling denying the suppression of the shotgun evidence.

SENTENCE

The Defendant was sentenced April 23, 2004. His sentence for the Attempted Robbery First Degree was that effective May 7, 2003, he was sentenced to four years at Level V. On the count of Possession of a Firearm During the Commission of a Felony he is to be imprisoned for eight years at Level V, consecutive to the forgoing, suspended after serving six years at Level V, for two years at Level IV, home confinement. The Defendant is to be held at Level V until space is available at Level IV. Level IV home confinement is suspended after six months for the balance to be served at Level III. The first five years of the sentence is a mandatory term of incarceration. On the count of Conspiracy Second Degree he was sentenced to one year Level 5 suspended immediately for one year of Level II concurrent probation.